London Bridge Inquests

Day 34

June 26, 2019

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Wednesday, 26 June 2019

(10.07 am)

THE CHIEF CORONER: Good morning, Mr Hough.

MR HOUGH: Good morning, sir.

THE CHIEF CORONER: Mr Hough, before we embark on dealing with the submissions, can I say two or three things. First of all, can I thank everyone for the written documents which I have received and which I have read and I know the oral submissions will very much take as read what is in the written work and no doubt deal with points which have arisen after other documents were provided. That's point one.

Point two, really, relates to tomorrow and probably to Friday. Inevitably there is quite a lot of material for me to cover in respect of my summary of the evidence that's been called and obviously dealing with my consideration and ruling on the various points which are put in the written submissions.

What I'm planning is that we should start sitting at 9 o'clock tomorrow. I hope -- I am looking across towards Mr Adamson who happened to catch my eye -- I hope that won't cause any difficulty to the families. I thought I would raise it now simply because there may be people not in court today who would like to be present or at least know what the plan is for Thursday

and Friday, so we will plan to sit starting at 9 o'clock tomorrow. We will take breaks -- people will be listening to my voice so it will be a welcome break to them and a short break for me when we get to there but I think that's probably the sensible thing to do and we will see then how much ground I cover on Thursday and how much ground I can cover on Friday.

Submissions by MR HOUGH QC

MR HOUGH: Sir, the purpose of submissions today is to address the legal principles governing the determinations you will be making in these Inquests and how they apply to the facts. We, from our independent perspective, have provided detailed written submissions with extensive reference to the authorities and evidence. Interested persons with an interest have mainly done likewise.

What I will do now is to summarise our submissions and address some of the main points where issue has been taken by interested persons. I shall deal first with legal principles governing inquest determinations, then with legal principles governing Article 2 substantive duties, then I will address the pre-attack investigation, Article 2 engagement and conclusions. Fourthly, I shall address protective security on London Bridge, Article 2 engagement and conclusions, and

fifthly, the determinations we have put forward for your consideration. I hope that is convenient.

Dealing, then, with legal principles on inquest determinations. The principles governing the determinations you may consider are not, in general, controversial. Under section 10 of the Coroners and Justice Act 2009 you are required for each of those who died to make a determination as to four factual questions: who the deceased person was and how, when and where he or she came by his or her death. You are obliged to record the determination using a Record of Inquest form.

In these Inquests, as in most, the critical question is how each person died. In most inquests that question is taken as meaning by what means the person died, which is a question focused on the immediate means of death, excluding broader circumstances, and excluding underlying and contributory factors. That "by what means" question can be answered by a choice between short form verdicts, such as unlawful killing, accident and so on, or by a short factual narrative of the means of death, or by a combination of the two.

The picture has been complicated by the incorporation into domestic law of the European Convention on Human Rights. Article 2 of the

Convention, the right to life, includes a procedural element which, among other requirements, obliges Member States to institute independent investigations into certain kinds of deaths which meet convention standards, including a standard of effectiveness.

In the Middleton case the House of Lords decided that where that procedural obligation was engaged in relation to a death, a modified approach to inquest proceedings was required. In such cases, the question of how the person died should be taken as meaning by what means and in what circumstances the person died. The result is that, where Article 2 is engaged in that sense, the inquest determination can extend to include wider circumstances of death and to underlying and contributory factors. To address that broader question, an expanded and more judgemental form of narrative conclusion will often be appropriate.

I should stress that this question whether Article 2 is engaged will usually have little or no relevance to the scope or rigour of the inquest, as the courts have repeatedly said, for example, the Court of Appeal in the Sreedharan case at paragraph 18. Its effect is usually limited to the approach to determinations.

As to when Article 2 is engaged in an inquest, and setting aside some categories of case where it is

automatically engaged, none of which applies here, it's engaged where it is arguable on the evidence that the State or its agents have breached one or more of the substantive Article 2 duties, whether duties to protect life or not to take life without justification.

There is some modest debate before you, sir, about what threshold the word "arguable" implies. At paragraph 6(d) of our submissions we have cited the one judicial dictum really addressing that point, the comment of Mr Justice Hickinbottom in the AP case where he said that it required an argument that was stronger than fanciful.

The Secretary of State suggests at paragraph 26 in Sir James Eadie and Neil Sheldon's submissions that that formulation is not quite right and that the test is whether there is a prima facie case, adopting language from the Ekinci judgment of the European Court of Human Rights.

In our submission there is little, if any, difference between the two formulations. What is tolerably clear is that the threshold is low. It has to be capable of being applied to an initial body of evidence to determine whether an investigation satisfying the Convention standards is required at all before the investigation has actually commenced and that

is the reason why it is a low threshold.

Of course, to say that it is arguable on a set of facts -- estate agents breached the operational duty -- is not to say that criticisms of those agents are ultimately justified.

It is common ground that if in respect of any particular deceased person you conclude that Article 2 is engaged, the modified approach outlined in the Middleton case applies for all purposes in respect of that person's inquest determination. If, for example, you say that Article 2 is engaged by reference to the conduct of a particular state body, you need not necessarily limit your broader conclusions only to the conduct of that body, see paragraph 6(f) of our submissions.

At paragraph 9 of our document, from page 11 to page 14, we've set out the case law governing how narrative conclusions should be expressed if you find that Article 2 is engaged on any basis for a particular person. Those, at least, are uncontroversial. The narrative should consist of judgemental factual conclusions on the key issues. It need not be, and often should not be, purely neutral in tone. It may refer to failings. It may extend to circumstances surrounding the death, even if it's only possible rather

than probable that they played a part in the death. It should be focused on the death in question. It should avoid addressing questions of high policy. It should avoid excessive length and complexity.

Sir, may I then turn to legal principles governing substantive duties under Article 2. Because it's necessary to ask whether one or more Article 2 substantive duties were breached in respect of each of the deaths, it is also necessary to consider the content of those duties. Article 2 imposes a negative obligation on states not to take life, save in certain situations. That duty is not at issue here.

It also imposes two types of positive obligation to protect life: a general duty on the State to have in place systems which protect life, and the operational duty which obliges State agents to take action to protect life, in certain circumstances, and in accordance with a legal test. I shall address each kind of duty in turn.

The general duty was characterised by Lord Bingham in Middleton, our paragraph 8(b), as being:

"To establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extend reasonably possible, protect life".

In cases such Oneryildiz and Budayeva this has been

found to require effective regulatory and safety systems to protect against environmental risks In cases such as Kakoulli and Makaratzis, it has been found to require effective systems for planning and controlling the risk of police operations.

In the healthcare context, in cases reviewed in your own recent Parkinson judgment, it had been held to require proper systems and practices of governance in hospitals. The suggestion has been made in the submissions of the Secretary of State, Ms Leek paragraph 9, and in the submissions of the City of London Police, paragraph 4.7, that where people are at risk from criminal or terrorist acts, the general duty is absolutely satisfied by having proper law enforcement apparatus. In other words, it could not be a breach of the general duty for the State to have inadequate systems to establish physical protective security measures. At least that is how we understand the point.

If we do understand it correctly, we would respectfully disagree. The European Court of Human Rights has never expressly set such a limit on the application of a general duty, nor excluded its application to protective security. In the cases where the courts have spoken of the duty being satisfied by a law enforcement system, they have been considering

either, as in Van Colle and Osman, the substantive duty in the context of preventing acts of crime, or as in cases such as Humberstone and NM, the procedural aspect of the Article 2 duty.

It would be bizarre, we suggest, in the context of a broadly framed and developing Convention duty of this kind to say that it could not in principle require systems to be put in place governing protective security against terrorism. In principle, we would submit, a terrorist threat to a place or kinds of places may be as serious and as foreseeable as an environmental risk or risks from police operations.

There is no suggestion that within the Article 2 general duty, enclaves are carved out which would prevent the duty being developed in the way that we would suggest.

In the application of the general duty, we would, of course, agree with the submission of the Secretary of State that it should take proper account of resources and that it should not be coloured by hindsight.

Let me turn, then, to the operational duty. That duty was first established in the Osman decision of the European Court of Human Rights and the test articulated in that case is cited in various of the submissions, quoted in ours at paragraph 8(e). In its original form

it required first of all that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an individual or individuals from the criminal acts of a third party. It required also that they should have failed to take measures within the scope of their powers and, finally, it required that those measures, judged reasonably, might have been expected to avoid the risk.

In this test, a real risk is one that is not remote or fanciful. An immediate risk is one that is present and continuing, that is to say not necessarily one that is sudden or topical. Although some authorities describe it as a high test, Lord Bingham in Van Colle at paragraph 30 suggested that it required no such gloss. As we understand, it is common ground that the Osman duty has been extended over recent years to encompass an obligation to protect society in general against the potential acts of one or more persons. We have cited the authorities for that proposition at paragraphs 8(j) and 8(k) of our document. We've also cited at paragraph 8(i) the case of Tagayeva in which the duty was engaged where the State knew or ought to have known of a terrorist threat which was generalised to educational facilities in a district.

A number of interested persons have rightly drawn

attention to two matters recognised in Osman and Re Officer L. First, that the standard of reasonable action does not impose an unreasonable or disproportionate burden on the authorities and, secondly, that it requires a view to be taken based on what the authorities knew or ought to have known at the time rather than one informed by full hindsight.

On the balance of the authorities, what State authorities ought to have known, we submit, includes what they should have discovered by inquiries any reasonable person in their position ought to have made, as the Metropolitan Police Service recognises at paragraph 10(f) of its submissions.

That was the view of Lord Bingham in Van Colle, paragraph 32, with whom Lords Carswell and Brown agreed generally. It was also a view supported by Mr Justice Silber in the Medihani case.

Finally in respect of the operational duty, proving a breach does not require proof that the appropriate action probably would have saved life. It is enough that the deceased lost a substantial chance of surviving, Van Colle at paragraph 138, Lord Brown.

Before moving to the application of the Article 2 duties in this case, let me make three preliminary observations: first, we appreciate that you have not, to

date, concluded that Article 2 is engaged. Your approach has been to keep the issue under review. While in many cases the issue can be resolved early in the preparation for an inquest, it's been sensible to address it in detail at this stage in these inquests. The court is now much better informed about matters such as the pre-attack investigation and protective security procedures. It was not necessary to address Article 2 engagement in detail before now, primarily because the scope and procedure of the Inquest have, on any view, been sufficient to comply with the requirements of the Article 2 jurisprudence. For those reasons, nobody suggests that you cannot or should not grapple with the Article 2 issues at this point.

Secondly, we would stress that the effect of Article 2 being engaged must not be overstated. The issue may absorb much interest and enthusiasm today, but it has not affected the extremely rigorous approach of the inquiry. Furthermore, as Ms Barton rightly submits, you will express your views, come what may, in a detailed summing-up of the evidence and the facts.

In addition, whatever the decision on Article 2, there would be scope to consider lessons to be learned through a Prevention of Future Deaths Report.

Thirdly, we are focusing on certain aspects of the

case which may justify Article 2 engagement in the comments in any narrative. That is not to deny the significance of other features in the evidence and I stress that point in particular because I appreciate that there will be matters in the evidence of great concern, for example, to the families that don't occupy much of the argument today.

May I then turn to the pre-attack investigation, Article 2 engagement and conclusions. In our submission, Article 2 is engaged in respect of all the victims of the attack on the basis of an arguable -- we stress arguable -- breach by the authorities in respect of the pre-attack investigation. The way we put the argument is as follows, in our paragraph 14: it is arguable that State agencies knew or ought to have known of a real and immediate risk to the public from the attackers and that they failed to take measures which, judged reasonably, might have been expected to avoid that risk.

The stages of the argument are threefold: first, that investigative opportunities were arguably missed, especially in the early part of 2017; secondly, that arguably had they been taken and the risk posed by Butt taken sufficiently seriously, there would have been additional monitoring which would have revealed his

actions on the day; and, thirdly, that appropriate action in response might reasonably have been expected to prevent the attack through a stop of the van, once again at the level of an arguable case.

We only submit that this provides an arguable or prima facie case. As we shall go on to say we do not ultimately accept that criticisms should be made of the MI5 investigation.

Let me take the stages of the argument in turn. Looking firstly at paragraph 15. First, it may be argued that prior to 2017, the authorities did not give sufficient weight to the threat posed by Butt. There had been a growth of low sophistication attacks but it is arguable that the potential lone actor assessments of Butt were unconvincing, in particular, identifying a weak capability in September 2015 and reduced intent in October 2016.

While Witness L said that these did not substantially affect investigative action, they were intended, and no doubt used, as aids for the operational team. They also arguably reflect upon the overall approach to assessing Butt as a risk.

The electronic media reviewed in October 2016 arguably cast a new light on Butt: someone in touch with a radical preacher, viewing extensive Islamic State

propaganda, and delighting in slashing the throat of a cow whilst comparing it to a man. Yet Witness L said it did not affect MI5's view of the risk he posed. It is fairly arguable that there were risk factors which justified Butt being taken as seriously as ever by early 2017, rather than being progressively deprioritised and considered for closure.

First, the original intelligence of attack aspiration, later confirmed; secondly, his plans to fight with Islamic State in 2016, which might have been further elaborated if contact with Usman Darr had been followed up; thirdly, persistent links to ALM, an inflammatory influence within ALM and increasing rhetoric; fourth, a history of violence, including spontaneous violence, and; fifth, an absence of any employment of significance and a daily routine not fully understood by the Service.

Turning to paragraph 17 and early 2017, it is fairly arguable that a number of investigative opportunities were missed in that period and that the evidence has revealed blind spots in the monitoring. In summary, first of all, not treating the gym as a significant investigative priority, despite it being a focal point of Butt's life and routine was, arguably, a missed opportunity. This is important as it was apparently

where he met Zaghba and Redouane and where at least one meeting to plan the attack started; that is to say on 29 May.

Secondly, the limited and ineffective attempts to discover the Ad-Deen school where Butt had been teaching, which would have helped in identifying Youssef Zaghba and seeing him as a significant associate. The association of Shahid, a person with significant extremist pedigree with both the gym and the school, which was known to MI5, should arguably have made the identification of the school easier and also raised its profile.

Thirdly, the failure to identify Redouane and Zaghba since they had been in regular telephone contact with Butt and saw him reasonably regularly stands out as a stark point.

Fourthly, the failure to attach more significance to those attending the meetings of 7 March 2017, especially that at the gym where Butt was being careful about what he said and appeared to be making efforts to obtain an item, was an example and one which was accepted as an area which could have been investigated further.

Against that background, we say it's fairly arguable that a greater level of surveillance should have been applied to Butt in the days leading up to the attack and

on the day of the attack. In particular, it may fairly be argued that the apparent blind spots in the understanding of Butt's routine and associates combined with the recent suspension of the investigation should have led to a period of focused coverage in the weeks following the unsuspension. We accept that that would have been resource-intensive, however, it cannot be said that Butt was in principle not suitable for intense monitoring as Witness L said that this had been arranged on at least one weekday.

Furthermore, it's likely that Butt had some covert meetings with the other attackers, given the logistics of the plan, identifying just one of those or any example of the anti-surveillance behaviour we saw on 29 May may have led to more intense monitoring.

Equally, the identification of Zaghba and Redouane might very well have picked up further signs of their preparations for the attack, given that all the paraphernalia was likely put together at their homes.

The next stage is to ask whether it is arguable that had further surveillance been in place on the day of the attack it would have alerted the authorities to Butt and his associates posing a real and immediate risk to the lives of the public. In our submission, that is an arguable proposition. Witness L gave evidence of a

number of investigative tools which logically might have alerted the authorities to Butt's attempts to hire a van with associates and possibly their peculiar purchase of large amounts of gravel. Monitoring of Butt's car would have allowed them to have tracked key movements of the attackers on the day, including that to B&Q. Monitoring of his calls would have alerted them to the call to Hertz at B&Q since it was made with his regular phone. Human surveillance would similarly have identified the van hire.

The final stage is to ask whether it is arguable that information as to the van hire and possibly the gravel purchase should have indicated a real and immediate risk of an attack, triggering a stop of the van. Again, we submit that that is an arguable proposition. Witness M said that he would have been inclined to stop the van and that that response was conditioned by what he knew about vehicle-as-weapon attacks.

Witness L said he doubted the information would have even been communicated to the police, but that is not an end of the matter. First of all, it is at least arguable that MI5 would or should have passed on information about an unexpected van hire and/or the odd purchase of gravel. This was, after all,

a collaborative investigation in which members of the two teams were in touch very regularly.

Secondly, Witness L, for all his great experience, was not the case officer, and his evidence on this point was necessarily based on assumptions of what approach would have been taken by others.

Thirdly, Witness L assumed that the case officer would have learned of the house move cover story and, furthermore, would have accepted it uncritically. Neither assumption is obvious or beyond argument.

Having made all those points as to why there is an arguable breach of the Article 2 duty, let me now turn position somewhat and explain why we say that the narrative conclusion ought not to criticise a pre-attack investigation, Operation Hawthorn, and we address this at paragraph 24 of our document, and here we distinguish between what is arguable and what should ultimately be accepted.

First of all, Witnesses L and M have described an operation which was thorough and involved extensive coverage over a period of time. Despite the fact that Butt had not shown any evidence of attack planning over a two-year period, he was always treated as the main subject of interest and always within a P2 investigation.

Furthermore, it's telling that the MI5 team learned nearly all of the facts relevant to the risk Butt posed, even when assessed against the results of the post-attack investigation. They learned his original attack aspiration; his association with ALM figures, including periods of engagement and disengagement; his intention to fight with IS and possible plans for legitimate travel; his accessing and sharing of extremist material; his involvement with the Regent's Park rally; his SIA accreditation and employment with TfL; the altercation in Goodmayes Park; the fraudulent bank fund reclaims and the regular use of the UFC gym.

The investigation also identified a number of the key meetings including both of those on 7 March 2017 and those on 18 April and 14 May 2017.

The tragic fact that attack planning was not detected can be explained by the obvious care taken by the attackers to keep any planning secret and to keep preparations away from Butt's house. Furthermore, Butt carried out the attack with two individuals unknown to MI5 which were relatively recent associates of his and that may well have been a deliberate choice on his part.

Secondly, Witness L gave what in our submission was a cogent explanation of the decisions about prioritisation of resources. Given the recognition by

the Article 2 authorities of the need for proportion and reality in the assessment, we cannot, for example, accept that it is a breach to suspend investigations at a time when expert staff are needed to address greater threats.

Thirdly, while it's possible to identify steps which would have led to Redouane and Zaghba being identified, and while we can now see all dealings with them as potentially related to a lethal attack, we've got to set aside hindsight. In our submission, L's evidence that Redouane and Zaghba would probably have been seen as social associates of Butt should ultimately be accepted. We say that for three reasons: first, they were recent associates and most of their meetings with Butt were evidently social: swimming sessions with people of no extremist bent, the trip to Leeds on 18 April to buy a car, the barbecue with family and neighbours on 14 May.

Secondly, even after scouring of CCTV in the area and all the investigations carried out by the police, by MI5 and for that matter by the media after the attack, only one meeting in the open with suspicious features has been identified: that of 29 May.

Thirdly, neither Redouane nor Zaghba would have been flagged as having terrorist or other criminal

connections which might have coloured the authorities' view of them.

Next, we would say that even if it can be said that further investigative steps could or should have been taken, or that Butt's risk profile should have been higher, it's difficult to conclude ultimately that MI5 should have had him under live monitoring on 3 June. As we've submitted, it's arguable that they would or should have done, but we ultimately find the argument unconvincing. In our submission, Butt's risk profile, based on the information known to MI5 before 3 June 2017, did not justify continuous live monitoring or did not obviously do so.

Witness L explained cogently that such an approach must be reserved for those believed to be planning an attack.

Furthermore, we would ultimately reject the argument that further investigative steps would have revealed information such as to trigger continuous live monitoring. As I've said, the attackers were very careful to avoid being observed, for example, by holding their discussions late at night and out of view and by deploying a careful cover story for the van hire. Even after all the post-attack investigations there is no evidence that anyone other than the three of them knew

the attack plan, and only fragmentary evidence that one person might have known that an attack was in prospect at some point.

Fifthly, even if MI5 had learned of Butt's efforts to hire a van, a criticism should only be made of the investigation if knowledge of those efforts would have caused the van to be stopped. In that regard, L gave a plausible explanation as to why an intelligence professional would not have wanted the van stopped; namely that that would have blown the investigation when the van hire had an innocent explanation.

Before I leave the topic of the Article 2 duty and the pre-attack investigation, may I address some submissions made by my learned friend Mr Patterson at page 23 of his document, in which you're asked to review some of the earlier decisions you've made in the light of the evidence.

First, you're asked to review the indicative scope ruling in which you have said the consideration of what was known to the authorities would include "some consideration" of what was known to MI5. In our submission, there is no need to review that ruling for one simple reason: the Inquests now held have considered what was known to MI5 in unprecedented detail and to the greatest extent possible in a public process with

properly full involvement of the bereaved families.

Secondly, you're asked to consider whether the evidence calls for any additional evidential inquiries. In our submission, such inquiries are not required now. In our original review of the MI5 operational documents we identified a wide range of potentially relevant documents and we sought to identify substantially everything which could add materially to the understanding of the risk Butt posed and the investigative methods used. The evidence does not cause us therefore to say that more material should be called for.

Thirdly, you are asked to review the wily balancing exercise in the light of the evidence. We know that you have kept the PII judgment under review throughout this hearing. In our submission the evidence does not call for any change to it. Although we can't go into detail in an open hearing, what we can say is that the national security interest which justified the ruling was substantial and were very well and fully reasoned. The PII process was rigorous and it took account of the likely issues in the Inquests as they have eventuated.

Fourthly, you are asked to review the decision that the duty of inquiry under the Coroners and Justice Act, informed by Article 2 as relevant, could be satisfied by

an inquest rather than a public inquiry. In our submission, these Inquests have shown that it has been possible to conduct an inquiry of impressive depth and breadth with the available material. We would add, for the family's sake, that a public inquiry would have been a less satisfactory process for them with probably no public examination of MI5 or SO15 witnesses. Furthermore, even a public inquiry would not have been able, realistically, to examine all aspects of intelligence monitoring or to second-guess every intelligence judgment, and we note that the Secretary of State supports all the points I have just made.

May I move on, then, to protective security on London Bridge, Article 2 engagement and conclusions. Addressing first the general duty: in our submission there is an arguable case that the Article 2 general duty was breached in the failure of the State to have in place adequate systems for assessing the need for and then implementing protective security measures in the form of hostile vehicle mitigation. We address this topic from paragraph 26 of our document, and we set out the background in detail up to paragraph 43. I don't propose to go over all that ground.

We've already explained why we say that the Article 2 general duty requires the State to have in

place adequate systems regarding protective security against foreseeable terrorist threats. As we set out at paragraph 44, we say that there are four arguable deficiencies in the systems in place up to June 2017, and we note that none of the bodies engaged in providing protective security on the ground positively disputes the engagement of the general duty.

First, the classification of locations as prioritised crowded places was arguably too rigid. We stress that our criticism is not of the public-facing definition of crowded places which is broad and pretty anodyne. Our criticism is directed at the battery of tests used to determine whether a place could be a priority crowded place, that's to say in tier 1 or 2.

Ms Nacey of the OSCT very fairly accepted that those tests were too rigid in various respects. First of all in setting the crowd density threshold at a level where London Bridge with its packed rush hour pavements could not qualify. Secondly, in demanding that a place have a geographic specificity and an individual point of contact. The tests were and are important. It was a matter of discretion, resources and capacity whether a place other than a tier 1 or 2 crowded place would be assessed by a CTSA.

On the evidence, it appears that there was no CTSA

assessment of London Bridge before PC Hone was asked to come up with a list of high-risk sites following the Westminster Bridge attack. While the direction to make that assessment reflects well on DAC D'Orsi and PC Hone's assessment reflects well on him, the systems were such that London Bridge was kept outside the priority areas by over-rigid classifications.

The second arguable deficiency in the systems was a lack of clear lines of responsibility and procedures for ensuring that highway authorities considered the vulnerability of key areas for which they were responsible. In all the evidence, we have not been told of advisory material advising highway authorities systemically to review the risks of vehicle-as-weapon attacks on roads under their purview. Ms Hayward and Mr Hughes understood their role to be to react under the guidance of the CTSAs who would be appraised of all the intelligence.

It is hard to criticise them for taking that view since other highway authorities were evidently doing the same, yet CTSAs would not be treating roads as priority areas precisely because of the classification in the crowded place system.

The third arguable deficiency was a lack of clear procedures for a reasonably prompt consideration of

temporary and permanent HVM measures. Vehicle-as-weapon attacks in open public spaces had been growing in number and seriousness: Nice, Berlin, Westminster, Stockholm. However, there was a lack of clear understanding about how to address vulnerabilities quickly. PS Hone, a very experienced CTSA, thought there were just two options: permanent HVM, which would take years to implement, or use of the National Barrier Asset for a special event or in response to intelligence of a particular threat to a specific place. That is why he only considered permanent HVM and other police witnesses generally took the same binary view.

In fact, there was a third option to use temporary HVM procured privately. That was not well understood by the policing authorities. While some witnesses referred to the possibility of a gold group being formed at short notice and implementing urgent temporary HVM, there was no evidence that that was even contemplated amidst all the warnings of the vulnerability and attractiveness of London Bridge.

When HVM was installed after the London Bridge attack, it resulted from the direct action of DAC D'Orsi who commendably set all the rules aside.

May I then turn to the operational duty and I will assess that briefly as it's an academic issue if our

submissions on the general duty are accepted.

In our submission, it is not arguable that the operational duty was breached. As regards TfL, it cannot be said that that authority knew or ought to have known of a real and immediate risk to users of London Bridge, such as to require it reasonably to install HVM prior to the attack. TfL reasonably expected that the police would inform it of areas of risk which required special protection against terrorist action. It was capable of acting on such advice.

The same points apply, in our submission, to the Corporation: it was first made aware of London Bridge as a vulnerable area on 8 May 2017, at which time Mr Woolford was specifically told, as he said, by PS Hone, to await further advice. Even if Mr Woolford had pressed PS Hone, he would at most have been told that PS Hone was recommending the installation of permanent HVM, a process taking a considerable period of time.

As regards the City of London Police, we acknowledge some of the criticisms which have been made about communications within the force, however, there is no basis for a finding of breach of the operational duty. The starting point of the analysis is that Mr Hone was rightly accepted by everyone to be expert and

conscientious and to have done his job in exemplary fashion. However, when he first aired concerns in March 2017, that was to encourage greater use of the Servator tactic, action which was in fact taken by the City of London Police.

When he next aired concerns, in mid-May 2017, it was to urge the installation of permanent HVM, action which would likely have been considered. Given that there is, rightly, no criticism of him, we say it cannot be argued that the City of London Police was required to go further or more quickly than his recommendations.

Finally, for completeness, we don't accept that it's illegitimate to address the State bodies individually in that way. That is in general how the analysis is performed in both our courts and in the Strasbourg institutions.

May I make a further submission in relation to a point which has been made by some of the families. In our submission any finding of Article 2 engagement based on protective security should be limited to the inquests of Xavier Thomas and Christine Archibald. We do not accept the argument that it should extend to the other inquests on the basis that HVM measures on London Bridge would have caused the attackers not to commence their knife attack in the Borough area at all. That argument,

we submit, respectfully, is simply too speculative. It is based on guesswork as to the attackers' intentions. It is conceivable that they were determined to begin their attack with a long drive down a pavement and that HVM on London Bridge would have caused them to go elsewhere entirely.

However, it's equally possible that they were attracted to the Borough Market area after their first pass down Borough High Street, for example, by the sight of numerous young people out and about in a cosmopolitan setting.

They may well have driven onto the longest unprotected section of pavement they could find or into a convenient group of pedestrian bystanders and set off on their knife attack in broadly the same way. Any attempt to go beyond pure guesswork involves psychoanalysis of the attackers, which we submit is not realistically possible.

As regards what the narrative determination should say about protective security, we submit that it should recognise a weakness in the systems for assessing vulnerable open spaces and installing hostile vehicle mitigation measures. In our submission that weakness is demonstrated, not merely arguably.

Beyond that we're open to the submissions of others

regarding the precise form of the narrative passage we have suggested in paragraph 63 of our document, and we may address those in reply.

May I now turn to proposed determinations. First of all, we submit that the determination for each of those who died should begin with a short form conclusion of unlawful killing. While much time has rightly been taken up in these Inquests in considering whether the attack could have been prevented or its effects mitigated, the basic fact remains that each of the young people who died was murdered, and murdered by terrorists. The overwhelming responsibility for each death rests with the attackers, and that should be recognised in the conclusions.

Secondly, we submit that in each determination there should be a narrative passage setting out the means of death, the answer to the narrow version of the "how" question, and that's important because it will reflect the valuable evidence we have had which has informed each of the families about the circumstances in which each of their loved ones met his or her end. We've suggested a form of words in each case, we're aware that the families will need to consider these, and we would be open to discussing the precise wording over the next 24 hours. We would hope that no ruling will be required

and that any revisions can be agreed between ourselves and the families' teams, circulated tomorrow morning, and approved by all.

I should stress, however, that that process of discussion would not be intended to introduce controversial material such as implicit criticisms of others. And, for completeness, we see the force of the small amendment suggested by the LAS in relation to the passage for Christine Archibald.

THE CHIEF CORONER: And it may be since you started on your feet Mr Patterson and his team had submitted some proposals in respect of the draft, so I'm not going to say anything about that at this stage, Mr Hough, but certainly I echo your submissions that hopefully the wording can be agreed by sensible dialogue.

MR HOUGH: Our intention, and I think Mr Patterson's intention too, is to produce neutral forms of words which don't generate any controversy.

Thirdly in relation to determinations, as we set out at paragraph 61, we submit that there should be a passage in each narrative identifying the fact that multiple warning signs about Butt's extremist views and conduct were apparent to some of his close family members before the attack and they were not, in the main, reported. In our submission, that is

a significant feature of the case and the evidence which merits being specifically recorded.

We would not agree, respectfully, with the submission made on behalf of Zahrah Rehman that she be specifically excluded from that rubric. There is substantial evidence of warning signs evident to her in her husband's behaviour. That said, we don't favour singling out her or specific family members in our form of words.

Fourthly, we submit that there should be a passage in each narrative recognising that Butt was under investigation by the Security Service and that the other attackers were not, and we set that out at paragraph 62.

For the reasons I've already sought to give, we would not support any additional passage adding criticisms of the MI5 investigation.

Fifthly, as I've said, we submit at paragraph 63 that there should be a passage in the narrative determinations for Xavier Thomas and Christine Archibald concerning the lack of proper assistance for assessing the need for HVM and implementing it promptly.

The final substantial topic for me to address concerns LAS and the emergency response more broadly. Nobody suggests that there was any arguable breach of Article 2 duties in the conduct of the emergency

response, or that there should be explicit criticism of that response in the narratives. For reasons we have given, which I understand the families accept, it is impossible to posit a faster or better organised emergency response which could realistically have saved any of those who died.

As regards the modified narratives, which are proposed at pages 5 and 6 of the submissions of my learned friend Mr Patterson, we would be open to amendments identifying more clearly those who provided early emergency care and recognising that they did so while in harm's way. However, we would not favour references to those assisting not having known that ambulances were close by, and I say that for two reasons: first, for most of the time that those individuals were helping and for all the time that each casualty was alive, and certainly while each casualty was capable of being saved, there were not ambulances close by.

Secondly, we would be wary of any change to the narratives which implicitly suggested or would be read as suggesting that the person might have been saved but for some failing in the emergency response.

We have, of course, heard and taken full account of the points raised by Mr Patterson in questioning LAS

witnesses, and we acknowledge the real concerns he has raised. In our submission they will probably be best addressed in a Prevention of Future Deaths Report. Both Superintendent McKibbin and Mr Woodrow accepted that improvements might need to be made, for example, in communications between services and in procedures for getting care to those in dangerous areas.

So, sir, those are my submissions at this stage. I appreciate that I have not been able to cover every point in the substantial and helpful written submissions of others and that I have covered some with more brevity than if I had been focused on one issue in the case. If further points need to be addressed, I will propose to tackle them in reply.

Sir, may I assist further at this stage?

THE CHIEF CORONER: No, can I just again echo what I said at the beginning. Mr Hough, I have been extremely assisted had in my first thoughts on these points by your very detailed submissions that I know you and Mr Moss have worked on, they are extremely helpful, and I repeat the same for all the other written submissions I've had. Thank you.

MR HOUGH: Thank you, sir.

THE CHIEF CORONER: Mr Patterson.

Submissions by MR PATTERSON QC

MR PATTERSON: We have set out our submissions in writing in some detail. It is important that the families should know that I won't be covering on my feet everything that is dealt with in writing. I have limited time and I want to focus in particular on the investigation and the arguments as to Article 2.

THE CHIEF CORONER: But, again, just on that point, Mr Patterson, so the families know, I have had your extremely helpful written submissions.

MR PATTERSON: Yes.

THE CHIEF CORONER: And, perhaps more importantly rather than just having them, I have had the chance to read them and to consider the points that are made.

MR PATTERSON: I'm grateful, and Ms Ailes, as you have indicated, served something this morning dealing with the precise narrative wording which, again, it is important that those who I represent understand that that is being dealt with, albeit that on my feet I want to deal with Article 2.

Likewise in relation to barriers, we have made our points in writing. Mr Adamson and I, as you might expect, have liaised closely. He will be focusing orally in his submissions on that.

THE CHIEF CORONER: Yes.

MR PATTERSON: May I make this important point to begin with, sir: everyone participating in these Inquests recognises that the primary responsibility for those eight tragic deaths lies with the three terrorists who committed what were brutal acts of premeditated murder, and nothing that we say should be interpreted in any way as detracting from that essential truth.

Terrorism, of course, is a scourge on our society and the effects of it can hardly be overstated. In a few minutes or even moments, innocent lives are viciously destroyed and in these Inquests your Lordship has met the bereaved families whose lives equally will never be the same again.

Although it's self-evident, it does bear publicly stating that the public themselves cannot investigate terror suspects. Within our society we pool our resources and we fund investigators to whom we give significant powers of investigation, and you, I know, are familiar with what they are empowered to do, and the MI5 Witness L listed their extensive powers that Parliament on our behalf have entrusted to them: surveillance, covert cameras, monitoring of things being said over telephones, or using listening devices and the like.

But the truth is, sir, that the eight young people

who were killed by Butt and his accomplices relied, as we all do, on the Security Service and the counter terrorism police to keep them safe. The potential targets of the terrorists, namely we, the public, expect these investigators to do what they are resourced and empowered to do to protect the lives of the public, and the essential submission of the families to you, sir, is that sadly, the evidence does show that the investigators failed to discharge their duty. Despite the resources and the powers that they were provided with, regrettably they did not discharge their responsibility when dealing with this dangerous man, Khuram Butt.

Now, Counsel to the Inquests submits and indeed concedes that Article 2 is engaged in respect of each of the eight Inquests on the basis that there is an arguable breach of that duty to protect life, insufficient steps having been taken to prevent the attack. And so contrary to what is argued on behalf of MI5, Mr Hough and Mr Moss do submit that there is an arguable basis for criticism and that that argument cannot be said to be fanciful, and you have the points they make at paragraph 14 of their argument: opportunities missed, particularly in the lead-up to the attack, further investigations that should have resulted

in additional monitoring, that this would have revealed the actions on the day of the attack, including the hire of the van, and that the discovery of the hiring of the van should have led to the stopping of the attackers.

Mr Hough lists areas in which it can be argued that the investigators didn't attach sufficient weight to information that they had in their possession, and that they failed to obtain information which was reasonably available and that proper attaining and assessing of such information should have been taken into account when it comes to the allocating of resources to Butt.

So all of those points, sir, all of those concessions and points identified by Mr Hough we say are highly significant, and the families submit that they take you -- obviously you, sir, as the ultimate decision-maker -- they take you virtually to the conclusion that the investigators did not act reasonably and should -- should be in the public interest the subject of appropriate comment for breaching Article 2.

So, for example, the content of the devices should have led to much greater concern being shown about Butt and should have led to greater coverage. It's not an all-or-nothing situation. We've heard observations from the Metropolitan Police about 24/7 coverage. We've heard observations from MI5 about extraordinarily

intensive coverage. Mr Hough earlier spoke about continuous monitoring. Nobody is arguing for that. It's an easy argument to be deployed to try to respond to legitimate criticisms, we would respectfully submit. Nobody is arguing for that. What Lord Bingham says is required is reasonable investigation, and that's where we focus our submissions.

So in terms of the devices and what was found on the devices, for example, there is a danger that with familiarity of seeing this sort of material that something approaching a laissez-faire approach to such material might arise in the minds of some investigators if they don't carefully assess what actually is revealed, and if quite a few significant categories of material are found on his devices, as we say they were, that needs to be weighed.

So it's not just a case of saying: oh, it's more of the same extremist material we see in many of these cases, it needs a nuanced approach, and a reasonable investigator couldn't have failed but to have increased the investigative steps when the autumn 2016 material was received.

Over something approaching six pages, Mr Hough lists at length the arguable failings, and the families are grateful for that, and those five or six pages they

submit amount to a fairly damning list.

Now, it's submitted that that doesn't, however, lead to the conclusion that there has been a breach worthy of comment, but we respectfully -- and we are grateful to Mr Hough and Mr Moss -- but we respectfully submit that his ultimate conclusion jars somewhat with his rather damning list, and it doesn't obviously flow from that antecedent list of arguable failings. The attack planning was going on for quite some time, it was not undetectable, it was there to be detected, eminently detectable, and we submit that these eight tragic deaths did not need to have happened.

Now, Witness L referred to successful disruptions in other cases, and of course that is all to be welcomed, but you, sir, will need to consider what relevance and how much, if any, relevance is to be given to that when you consider this case and this investigation.

Counsel for MI5 emphasises the threefold approach and we all agree as to the law, and we all agree that there has to be a real and immediate risk. Nobody overlooks that. The families deal with that in the written submissions, we refer at paragraphs 28 and 29 and elsewhere to the Osman test. We say it is clearly established. The real and continuing risk was plainly there, it was posed by Butt, and it ought to have been

known by the investigators, and we say that reasonable investigative steps would have -- would have -- resulted in a real prospect of detection, whether the causation test is formulated as a real prospect or a substantial chance we submit makes no difference. The case law is clear that it is not a requirement of the balance of probabilities, it is not a requirement that it has to be shown that it was probable that it would have been detected; merely that there is a real prospect, a real possibility, a real chance.

As Mr Hough rightly said, it shouldn't be overstated the real and continuing risk. Lord Hope in Van Colle at paragraph 66, as well as Lord Bingham at paragraph 30 makes it plain that when Lord Carswell in one of the authorities spoke of a high threshold, that should not be taken as changing the test or introducing any kind of gloss to the test.

Before I leave Van Colle, the City of London Police make an observation as to Lord Bingham's approach. We respectfully disagree. Lord Bingham, Lord Carswell and Lord Brown all make it plain that they are in agreement with the approach of Lord Bingham to the law and to the test.

So trying to help you as much as I can, sir, we would like to zero-in on the key areas for your

deliberation, the key areas really are to be found in Mr Hough and Mr Moss' helpful document where they focus on why, despite that damning list, in fact you shouldn't find a breach. So if we can zoom in on that.

At paragraph 24, really, that's where they deal with it. They argue that both L and M describe what is said to have been a thorough investigation, and today there was reference to the fact that it was a P2 categorisation. Well, the fact that a P2 categorisation is given to it doesn't of itself help you with whether reasonable steps were taken or not, you need to focus on what was actually done or not done.

The point we make, sir, is that you've been given no actual evidence of the details of what was done, and in the PII application, we assume you were provided details of investigations carried out, but of course as you made plain in your ruling, you must put that material out of your mind, and we know that you will, but the fact remains that there is no actual evidence that provides specific detail to show what was done by way of investigation.

So for all the families know, there was not extensive and thorough and reasonable investigations. For all the families know, there was only quite limited eavesdropping or surveillance as to this priority

terrorist suspect.

At paragraph 24(a), there are submissions advanced by Counsel to the Inquests about things that were discovered. Of course those facts that were of themselves discovered don't establish that what was done meets Lord Bingham's test of reasonableness, or the Osman test of taking measures which, judged reasonably, might have been expected to avoid the risk, and that the essential point is that in any two-year investigation, of course, of course there will be many facts learned, but that doesn't establish that they have met the test of reasonableness.

At 24(b) there's analysis of suspension and of the prioritising of resources, and a lot of weight is placed on this by both the Metropolitan Police and MI5, but we invite you to be vigilant, sir, as to how far is this to be permitted to be taken, this argument. It's deployed again and again and of course it is relevant to consider resources, but you may share a sense of unease, and certainly the families have a sense of unease, as to the claim that suspensions are essentially to be simply accepted and permitted end of story. That's the essence of what we're being told, as though somehow they are to be ring-fenced from consideration when you assess the reasonableness of the investigative steps especially,

sir, when one, one of the two partner agencies of the police wasn't even asked for their view as to whether it was reasonable to suspend on two occasions for many weeks; two, this was all happening very regularly, we were told that it was happening day in and day out, so it's not just something that unexpectedly arose and couldn't be addressed by the urgent training of additional staff, you were told that it happens all the time. Year in, year out, essentially is the evidence, which is terribly troubling for the public. And despite that, there was no request for further resources.

Thirdly, no middle course was adopted in terms of continuing a scaled-back investigation into Butt. It was essentially an all-or-nothing decision and they decided to cease a significant amount of investigations and coverage. They were stopped.

Fourthly, there was no change at this stage in the risk that he was posing.

Fifthly, this is all at a time of increased national risk, so at a time when it might be thought that, if anything, things should be stepped up, on the contrary, they are being scaled back in relation to this priority terror suspect.

So it's being argued by MI5 that suspension is something basically that simply has to be accepted, and

that it cannot be the subject of question or comment or criticism.

So for all those weeks we are simply to accept that this risk to the public is to continue without what his threat risk would otherwise require.

So although we do accept that allowance for resources is to be permitted to a degree, Lord Bingham was very clear in Van Colle at paragraph 30 that states are required to secure the practical and effective protection of this fundamental right, and that is a principled approach that we see in the Strasbourg case law and in our domestic jurisprudence again and again and again, otherwise we would be stripping or denuding from Article 2 the very protection that it is there to provide, and there is no case law that we have identified which states that in effect Article 2 will still be complied with if, at a time of increased national terror threats, investigations of a suspect are essentially stopped or very largely stopped.

The case law doesn't go that far. It makes the resources point. It doesn't permit of the extensive suspension features that arose on two occasions with Khuram Butt.

So increased national threat should not routinely and repeatedly lead a reasonable investigator to reduce

monitoring and such decisions are not reasonable, particularly when there was no consideration of a degree of scaled-back but continued monitoring.

Next, sir, at 24(c), the social associates argument, to the effect that even if the two accomplices had been identified more, their associations would be regarded as merely social, and again, we ask you to approach that assertion by Witness L with great care, and we say it should be afforded little weight. First, it doesn't come from the investigators themselves, it comes from, essentially, a corporate witness saying what he believes those investigators would have been likely to think, and so he is speculating about the assessment of others.

Secondly, he was offering an opinion as to what other investigators might think if further unknown details were learnt, in other words, it was a might placed upon an unknown set of postulated facts and, indeed, his evidence on this involves, we would submit, very real speculation for those two reasons. Speculation, indeed, seeps into much of the arguments again and again that we see in the MI5 skeleton argument.

Third, there was evidence that Butt was engaged in withdrawing from old non-extreme social contacts or friends.

Fourthly, and linked to point three, that those people he was associating with were increasingly extremists, linked to the proscribed terror organisation, ALM.

Fifthly, the two examples relied upon in support of social meetings were themselves suspicious: the trip to Leeds involved meeting the Abdoullahi brothers, both of whom, we were told, were placed under pre-attack investigation and indeed, were arrested by the counter terrorism police.

The second example that was relied upon, the barbecue on 14 May, was at a time when we know there will have been consideration given to the purchase of the three knives the next day, and at a time when Abu Talha, the Abdoullahi brother who was under counter terrorist investigation, was speaking about gutting a kuffar. So these associations, whether they can be described as social or not, are certainly not free from concerns.

At 24(c), submissions are made to the effect that even now there has only been identification of one suspicious overt meeting, namely the 29 May walk-and-talk meeting. We struggle to understand this point. It seems to us, sir, that given the 7 March meetings which it has been recognised were particularly

significant, that's how Mr Hough described them, despite what MI5 might say about them in their document at page 15, but 7 May is terribly important. During the investigation, the investigators were aware that Butt was meeting with Redouane at his home address, and they were aware that a little later that same evening he was at the gym, and again, Redouane is believed to have been present and at this time, Butt was wanting to be secretive about his conduct, and at this time, he was trying to get hold of an item. So all of that was known at the time.

Mr Hough argues that searches in relation to Zaghba would have revealed no terrorist or criminal connections, paragraph 24(c) but, again, we would again invite you to look closely at that: it must be a possibility, not fanciful, but a real possibility that the SIS marking would have been discovered, the serious criminality marking.

A reasonable investigator would, of course, have followed that up, and that would have resulted in the discovery that far from being just an innocent associate, this man, Zaghba, was a person who, some months earlier, had tried in vain to travel to fight for that highly violent terrorist group, Isis, and a reasonable investigation would have identified that

Butt was working at a gym owned by a major terrorist suspect, Sajeel Shahid. This whole area, sir, of the gym and Shahid, leaves the families completely bewildered. A reasonable investigation would have investigated these things. That would have resulted in the link to the school being unearthed.

We list the ease, at page 16 of our document, with which Shahid could and should have been identified. The inquiries were wholly inadequate. A Google search and a few schools is really what it comes to by way of investigation. How that can be said to be reasonable we don't know, especially given that the police arm of the investigative partnership had a special safeguarding responsibility listed in the strategic aims of Witness M's records, and indeed, they had the assistance of Prevent colleagues who could assist.

The fact that Butt was associating with Zaghba at that school where Butt was espousing extremist views to children suggests a trusting relationship between Butt and Zaghba. So it's not just co-location; it leads to the clear inference of a closely trusting relationship.

It's argued that even if there were some suspicious features identified, it's questionable whether they would have received in-depth monitoring. But, again, we say there are flaws in such analysis. A reasonable

investigator would have had greater coverage. We're not suggesting 24/7 coverage, but more coverage, especially given Butt's ongoing deployment of operational security techniques.

That's an important point. Again and again the argument is deployed that nothing could have been detected because he was acting in this secretive way. On the contrary, rather than exculpating the investigators, that use of operational security meant that they had to do more. They knew what they were up against, and you have to try to stay one step ahead of the terrorists. Witness L agreed: this showed that he had something to hide, and of itself it provided additional cause for concern.

The attack planning must have been going on for quite some months. The mutual telephone contact began on 14 January, and it was there to be detected: in the gym, at the front door of the gym where a phone was discarded on one occasion in suspicious circumstances; Redouane was working at the gym behind the same desk that Butt was working at; he was meeting Butt in various places, and L accepted that the three attackers may well have met regularly at that gym. So it is likely, we would submit, that the accomplices would have received greater attention in a reasonable investigation.

Now, a central plank of the arguments for suggesting that in fact the arguable breach shouldn't ultimately result in a finding of breach is the suggestion that it's difficult to say that there should have been live monitoring on the day of the attack, and the discovery of the efforts to hide the vehicles. But we submit that that misses the point. The actual threat posed by Butt had been present and continuing for some months. We know it had been there for some time. The attack planning didn't just start on 3 June. It didn't just start at 4.00 pm with the efforts to get hold of the van.

In focusing, as counsel do, on that single event on 3 June, we respectfully submit that they're not grappling with this important point, and we invite you to look closely at it, sir: for many months the attack planning was there to be detected and more coverage -- not 24/7 continuous coverage, nobody is suggesting that -- more coverage would be likely to have unearthed it.

It's argued at paragraph 24(d) that evidence suggests that there was -- that no planning or preparation took place at the home of Butt. We are aware of no evidence that suggests that there couldn't have been relevant discussions at the home address and

we know that he met ALM extremists, including Choudary at his home address, and MI5 knew of his use of the home address for meeting with extremists.

29 May, a lot of focus is placed at paragraph 24(d) on 29 May that walk-and-talk in the dead of night, but as I've sought to argue, sir, there's no evidence that that was the only occasion in which they were discussing attack planning, and it's highly unlikely that it was. The probability is that there would have been more in and around 15 May when the three identical knives were purchased for the three eventual attackers. The phone that was, broadly speaking, kept unused after the end of March, so all the way through April and all the way through May, kept ready to be used as it was in the attack.

So the opportunities were available at the time and the point is made: well, with the post-attack analysis, little more has been unearthed, but that, again, misses the point that their phones haven't survived. The discussions that they had at the time aren't available to us now, so there will have been -- you can be confident there will have been opportunities at the time to unearth the attack planning.

A significant point that is repeatedly advanced by both the Metropolitan Police and MI5, and it's touched

upon by Counsel to the Inquests, is the absence of evidence of attack planning having emerged. But the families, again, invite caution in respect of that, sir. We know what Lord Harris would say about it, we know what Lord Bingham would say about it, it ill behoves investigators to rely on absence of information suggesting an attack if they might have carried out inadequate or insufficient investigations to see if there's planning of an attack, and huge parts of his activities were going undetected.

L agreed "possibly a whole range of activity was happening without MI5's knowledge". That was the evidence he gave to you, sir. Virtually every evening when he was going to the gym, that was missed for months on end. Virtually every afternoon when he was going to the school, that it seems was missed for months on end, and given the risk he posed, this was, we submit, inadequate investigative coverage, and it doesn't need hindsight to show this.

Again, hindsight is an argument deployed readily, and of course it's important, but virtually all of the failings that have been identified in that damning list that Mr Hough and Mr Moss have assembled and which we have listed in our document were there to be identified in real time, as Sir James might describe it. It

doesn't require hindsight to spot these missed opportunities, especially also when we know that he is trying hard to avoid detection. There was no positive evidence of abandonment of his earlier stated aspiration to commit a UK attack, and that's an important point, and fourthly, in relation to this, no evidence emerged point, fourthly, you would expect attack planning to be hard to detect when it's a low sophistication scenario, when the time period, namely the spring of 2017, showed that low sophistication attacks were exactly the sorts of attacks that were being planned with less needed by way of preparation and less that was available to be detected.

So for all those reasons, a higher degree of monitoring was needed, and Lord Bingham and Lord Harris undermine significantly this point that has been advanced by the investigators.

At 24(e) it's argued that even if MI5 had learnt of the hiring of the van on the day, it's debatable whether it would have been tailed or stopped, and again, we invite you to engage with a number of distinct points on that. There are nine crucial points that we ask you to consider on that: first, a proper investigation would have had greater monitoring prior to 3 June at a time when the attack planning was there to be detected. I've

touched upon this earlier. We don't focus just on the Saturday afternoon.

Secondly, if they had detected knowledge of the van, it's possible, if not probable, that they also would have detected the hiring of the 7.5-tonne lorry. And MI5 and the Metropolitan Police haven't really grappled with this point, and we invite you to consider it closely. A reasonable investigator knowing of that, not just this LCV van, as it might be described by yesterday's witness, a 2.5-tonne van, but a 7.5-tonne lorry, knowing about that would have intervened and tailed and stopped, certainly as they made their way into the city centre.

Thirdly, there was no other significant investigation that you were told about that would have been compromised if there had been an intervention. And, fourthly, the evidence of M, which undermines the evidence of L. Without any need to resort to hindsight, the thrust of M's evidence is that the vehicle would have been stopped on the night, and he was not basing his decision on any suggestion that he had been advised by MI5 to stop, and care must be taken to consider what M was and wasn't saying in this part of his evidence. He said nothing of the sort. He merely said that if he had found out, essentially, from MI5, if he had been

notified, as of course he should have been in a reasonable investigation between the two partners, if he had been notified by them, his decision in that climate would have been to stop it, and certainly having regard to the causation test and what Lord Hope and Lord Bingham said in Van Colle, you don't have to have a probability of stopping it; all that is required is that there's the real possibility or the real prospect of stopping it, and clearly that arises on the facts, we would submit.

Next, the cover story. It's possible the cover story would not have been picked up. Even if it was, reasonable investigators wouldn't simply have accepted that at face value but would have considered it with care, and moreover, in assessing any cover story, L did not give any explanation for how a cover story could square with the rental of that huge 7.5-tonne lorry, and how on earth could a 7.5-tonne lorry being rented have been consistent with a young 20-something man moving flats for a friend.

The eighth point on this. We strongly disagree with the arguments that are advanced by MI5 as to the gravel. People "moving a brother" do not typically buy, and on the same day, load, 29 bags of gravel from B&Q when they're supposed to be moving the contents of a person's

flat. And that, again, would add significantly to the alarm bells that should be ringing in the mind of any reasonable investigator. And 9, and finally, L once again was engaging in speculation as to whether the van would be stopped. A reasonable investigator, investigating Butt, would, we submit, have discussed this with Witness M, and we know what Witness M's likely answer would have been: namely to stop, particularly in that climate, particularly a few days after the most recent terror attack in this country in Manchester.

So causation is clearly established on the evidence. There was a substantial chance or a real prospect, if not probability, that it would have been prevented, that the vehicle would have been stopped. So for all those reasons, we say that there was a breach.

Other things that haven't been touched upon by Mr Hough add to the concerns and to the criticisms, we would respectfully submit, distinct areas of evidence, namely the evidence you've heard suggesting that ALM was simply being taken seriously enough and that insufficient weight was being given to his meeting in particular with Choudary at a time when Choudary in 2014 had declared his public support for Isis and Baghdadi and was under arrest from 2014 and ultimately charged and then convicted in 2016 for supporting Isis.

Next, fighting for Isis probably involved a decision that he was willing to die. Again, that should have been given more weight by Witness L. The devices repeatedly showed that he was viewing material about martyrdom. Again and again and again, a focus on martyrdom operations. The message that Butt wanted to be amongst the martyrs in paradise, the message being reported to Jibril of all people. And then in relation to Sajeel Shahid, you have the points in relation to that, sir. They're perhaps self-evident: MI5 had known of his link to the gym since 2014. It was in the media in 2014. There was a reminder about a month before the attack in that Dover information that reached MI5 on 8 May and they knew that he had been accused by their witness in the Crevice trial of facilitating the terror training in Pakistan featuring Mohammad Sidique Khan, the most notorious recent domestic terrorist.

It was very troubling for the families to hear that the SIO of the counter terrorist team didn't even know until these hearings of the Sajeel Shahid link to Butt's gym.

Clearly any reasonable investigator would have identified that, would have investigated more into what Butt was doing at the gym, and the failings around the gym, we submit, are remarkable. L didn't know for sure

if the investigators even accessed the records that were held somewhere in the databases about Shahid, and we know that this is a gym where black banners appear to have been hanging up in the inside of the gym, although they were swiftly removed; that a sword or sheath was on display; that an Isis flag, it appears, was on their Facebook page, and all of this in the context of intelligence that Butt was considering a group attack, such that his associations were important.

Again, it didn't require huge resources. A lot of this was on the internet. A bit of straightforward investigative work would have unearthed these things and inevitably would have led to further investigative work.

So we submit that you are driven to the conclusion that there was a failure with any appropriate urgency or sufficiency to investigate what Butt was doing in and around the gym.

A number of distinct points, if I may, just to respond to some of the points advanced by MI5 and by the police, and I can take these briefly: the greater the risk, the more that has to be done, and given that they knew that rental of vehicles could still be obtained without any substantial obstacle being put in place, that heightened the need for thorough investigations.

Next, Sir James Eadie seeks to refine the Osman duty

in his document at paragraph 39. Instead of asking whether what was done was reasonable, he seeks to raise the bar by saying that you should ask was the failure to do something unreasonable, and I know, sir, you will be vigilant to guard against the misconstruing of the test or the raising of the bar in such a way. The test is simply:

"... measures which judged reasonably might have been expected to avoid the risk that they ought to have known."

See the wording in Osman.

And a further one, a lot of the focus of argument from the Metropolitan Police and MI5 is on what was being done by the accomplices, Redouane and Zaghba. But of course the opportunity to detect the attack planning didn't only arise in relation to them. Even without picking up what they were doing with knives or with fake IEDs, Butt was at the heart of it, and proper monitoring of Butt, not 24/7, but reasonable monitoring of Butt probably would have picked up the discussions about the attack planning: what was he saying, for example, in his text messages and the like.

So on that topic, to conclude, if you are against us you have wording that has been proposed by Mr Hough in his document at paragraph 62. For all the reasons we've

outlined, sir, we submit the wording should go further and you should record the fact that a reasonable investigation possibly could have resulted in the prevention of the attack, and indeed the wording proposed by Mr Hough isn't the end of it. Of course, Mr Adamson at paragraph 65 has proposed some other details that may feed into that part of any narrative determination, and so you have the possibility for degrees of comment on this central issue.

Finally, very briefly on barriers. Mr Adamson will deal with it. We submit that there were systemic failings and deficiencies. We also submit that the operational duty applies and we set that out in writing, and Mr Adamson I know will deal with it. But one point that I do need to deal with which Mr Adamson won't be addressing is the relevance of the barriers to the deaths of the others, and you may have noticed that when the evidence was being given as to the barriers, many of the family members in relation to the deaths in and around Boro Bistro were regularly attending. They don't think it's speculative that barriers would have made a difference. Common sense dictates that it's not speculative that barriers on the bridge would have made a difference to what was inevitably a terrorist attack to be conducted in two stages, and you have the point,

sir, that the propaganda emphasises doing a two-stage attack: Lee Rigby, Masood, the propaganda magazines: use the vehicle, after that when you've mown down people in the vehicle get out your knives and finish things off as part of your overall martyrdom operation, that's what they intended to do, and the suggestion that they might have, somehow, having seen the barriers on London Bridge, parked up, not deployed their lethal weapon with its 29 bags of gravel, to give it added lethal weight, is fanciful, we would respectfully submit, especially given that we know that another location that they were giving active consideration to was Oxford Street which would lend itself to a two-stage attack, given the absence of bollards or protective measures, and the other one was the City of Westminster. Again, what do we know about Westminster Bridge in early June? Still no barriers.

If barriers had been on London Bridge, the realistic outcome would have been that they would have gone elsewhere, and that's something which, as I say, both common sense dictates and is felt very keenly by the families. And you have the evidence from Mr Jolley and from Superintendent Riggs that it was a spontaneous decision on the night in essence, they were identifying as they went along where they could carry out their

two-stage attack.

You have the footage that we all viewed as they drove into the city centre. Nearly every street on the way there was closed down to them in terms of potential attack given the fact that all these streets were heavy with street furniture and bollards and obstacles and parked cars and the like. As Sergeant Hone told us, London Bridge stuck out in this regard.

So, sir, those are my submissions. I've been passed a note saying that I've now hit 50 minutes, but I'm pleased to say that I haven't gone substantially past 50 minutes.

THE CHIEF CORONER: Thank you very much indeed, Mr Patterson.

Mr Adamson, we'll take our break there and then we'll turn to the arguments. Again, I know that you and Mr Patterson throughout these Inquest hearings have divided topics of concern to both sets of families that you represent and I will know that you, as it were, side with his arguments in respect of what you've dealt with and you are specifically going to deal with the issues about barriers. But, as I say, just to make very clear to those that you represent, that I understand that division of labour and it's not that you need to repeat everything that's been said, I understand the position

entirely.

MR ADAMSON: Thank you, sir.

THE CHIEF CORONER: And I think after you, Mr Adamson, we're then turning to --

MR HOUGH: To the Secretary of State's two counsel, one after the other.

THE CHIEF CORONER: Yes. And it may well be, looking at Ms Leek and Mr Sheldon, if we get to about 12.55, we'll break at 12.55 rather than at 1 o'clock today if that's all right.

MR HOUGH: It may be that we hear from one of them before lunch and one after.

THE CHIEF CORONER: Thank you.

(11.45 am)

(A short break)

(12.07 pm)

Submissions by MR ADAMSON

MR ADAMSON: Sir, may I begin by thanking Mr Patterson for his submissions in relation to the Security Services aspects of this case. I adopt everything that he said. You have my written submissions in relation to it, and I invite you to include wording similar to that which is contained in paragraph 65 of my submission. I don't propose to elaborate upon it now; it's there in writing.

THE CHIEF CORONER: Yes.

MR ADAMSON: And if you accept Mr Patterson's submissions that the Article 2 duty is arguably engaged, then in those circumstances, we invite you to expand your narrative in relation to those matters.

As Mr Patterson indicated, I will be focusing my submissions predominantly on the topic of bridge security, bridge protective security.

At 22.07 on 3 June, Xavier was struck by the vehicle which the terrorists utilised to carry out their attack. It was a murderous act, but regrettably in this day and age a predictable one.

We, as a society, expect the State to put in place a framework of laws, procedures and systems to protect us against that threat. We submit that Article 2 is engaged in relation to bridge security matters, and we submit that it is engaged both in the systemic and operational sense.

The Article 2 duty imposes a positive obligation to take all appropriate steps to safeguard life and, above all, a primary duty on the State to place a legislative and administrative framework designed to provide effective deterrent against threats to life. That was made clear in the Oneryildiz case, proved in Rabone.

The Secretary of State for the Home Department suggests that in relation to the general duty to have in

place a system of framework and laws, that in the context of this case, that that is limited to putting in place effective criminal law provisions to deter the commission of offences against the person backed up by a law enforcement machinery for the prevention, suppression and punishment of breaches of those provisions. I'll come back to that in a moment, but that is in essence what is submitted at paragraph 7 of the Secretary of State's submission.

The general duty under Article 2 is not a closed shop. The duty to protect life has been found to exist in a range and variety of different circumstances. The Oneryildiz case, to which I referred, related to a municipal rubbish tip. An explosion occurred as a result of failure to operate that tip appropriately, a methane explosion, the authorities had been warned of the risks of an explosion and had taken insufficient steps to deal with it.

In that case the court said this:

"Article 2 does not solely concern deaths resulting from the use of force by its agents of the State, but also lays down a positive legislation ... to take appropriate steps to safeguard the lives of those within their jurisdiction. The Court considers that this obligation must be construed as applying in the context

of any activity, whether public or not, in which the right to life may be at stake ..."

And that, in that case, included industrial activities.

In another case, Budayeva, the allegations concerned the Russian authorities' failure to heed warnings about the likelihood of a large-scale mudslide, and in that case the authorities ought to have acknowledged the likelihood of the mudslide and taken practical measures to ensure the safety of the local population.

Another example is the case of Kolyadenko, that case concerned the duty to protect the risks inherent from the operation of a reservoir.

So you have a range of different circumstances in which the duty to protect life arises, and so it is that we turn in this case to the question of security on the bridge.

At paragraph 10 of the Home Secretary's submission, it's asserted that the duty to protect life in effect cannot embrace a duty to provide bridge security in the circumstances of this case. If there's any doubt about that it is, in my submission, eliminated by paragraph 13(g) of the Secretary of State's submission, in which the Secretary of State ends a series of questions, the final one of which is this:

"Where is the legal authority which provides that the Article 2 general duty requires the State to put in place specific physical measures to protect against the criminal acts of third parties? None has been identified by CTI [Mr Hough] or counsel for the families."

So in effect it is said that because there is no similar case, then this cannot be a case where the general duty is engaged. That, we respectfully submit, cannot be right.

We also submit that it is a startling proposition that in effect, the duty to protect life against the risk posed by the criminal acts of third parties, are effectively satisfied by having in place a criminal justice system.

The family I represent regard it as wholly unacceptable for the Secretary of State to assert that there was no duty on it, in effect, under the Convention to have in place a system of protective security.

If one steps back for a second and considers the implications of that, in my submission it becomes clear that it must be wrong. Could it seriously be suggested that the Secretary of State owes no obligation to those who attend football stadia if it had in place no system for considering the risks to which they were exposed

from threats from criminal acts of third parties?

In my submission, there is simply no realistic prospect that anyone would consider that the Article duty should be so narrowly confined.

In my submission, it also does not sit happily with the framework that the Secretary of State has in place. The Secretary of State in its submission relies in its argument against there having been an actual breach on the Prevent strategy that they had in place, and the system of dissemination of advice through NaCTSO, via CTSAs, to those with responsibilities for locations in the United Kingdom. In my submission, the structure that they have in place in relation to that must, we would submit, be capable of scrutiny. It must, we submit, be capable of engaging the Article 2 duty, because the whole system, in my submission, that is in place is designed to protect life.

And we would submit that it's present because the State recognises that it must have in place systems to protect life in circumstances such as these, and that includes the provision of an adequate system for ensuring that crowded places are adequately protected.

That is not, we submit, a submission which results in this court micromanaging or placing an impossible burden on the State by exploring and examining the

adequacy of the arrangements that they have in place and, where appropriate, criticising if those systems have fallen short of that which we expect.

The inevitable conclusion, we would submit, that you are driven to in this case is that the systems that were in place were, in fact, deficient. They were deficient for multiple reasons. First of all, the definition of the crowded places which was contained within the 2012 documentation to which were referred, and repeated in documents which were produced after the event in 2018, essentially remain the same. It was lengthy, unwieldy, and, in my submission, it was too rigid.

It operated in a way which meant that spaces as opposed to places were not given the attention that they ought to have been provided. We know that that is so because so far as London Bridge is concerned, before Police Constable Hone considered it, no CTSA that we are aware of had given any real attention to London Bridge or consideration as to the risks that it posed.

The second aspect of the system which was, in our submission, inadequate was the process of tiering. Unless a location qualified as a crowded place, ie because it met the relevant density criteria, and other criteria set, it could not qualify as a tier 1 or tier 2 crowded place. That would inevitably result in the

resource which was made available to it in terms of advice and other support would be diminished. At best, a location which did not meet the criteria for a crowded place could be considered a tier 3 location.

In our submission, a system which operates in such a way is inflexible because it inevitably results in a significant risk that a location that is of high risk does not receive the attention that it deserves, and it's also, in our submission, ripe for inconsistency.

The consequences of these failures was that London Bridge, we submit, for a prolonged period of time did not receive the attention that it deserved. It was only when Police Constable Hone examined it that the suggestion of barriers or some form of hostile vehicle mitigation for that location was suggested.

Now, in our submission, that in itself demonstrates the inadequacies of the system. This was a location which had predictably high levels of pedestrian flow, dense high levels of pedestrian flow at predictable times. It was a location which was exposed. There were no levels of protection for pedestrians on the bridge, and this was known before the London Bridge attack because it's contained within Police Constable Hone's summary of the Cerastes work and his recommendations on 16 July.

The system that was in place had failed to identify that location despite Nice, despite Berlin, despite Stockholm, and despite Westminster, and in our submission, the system did not protect life in a way which it ought to have done. It did not protect life in a way which can be viewed with the benefit of foresight, not with the benefit of hindsight, and we can say that with complete clarity and with complete certainty, because when one looks at the description of the threat that London Bridge posed and the Cerastes work, the Cerastes work predicted this event with unerring accuracy.

The system was also flawed in that the arrangements as between the various duty holders lacked urgency and dynamism. Not a single police witness spoke of any awareness of an ability to implement a temporary physical security measure prior to London Bridge. It was a binary option, in effect. HVM after a prolonged period of delay, or the National Barrier Asset, if there was specific intelligence or if there was an event. In our submission, the fact that those responsible for discharging the duties that they had to protect those on the bridge -- and they undoubtedly, in our submission, had duties in the context of their roles as CTSAs and the like -- were unaware of any other process to deal

with risks on the bridge indicates that there was an inherent inadequacy in the arrangements that they had in place.

There's a further element to the systemic failures, and that is the institutional fog we would submit that existed as to where responsibility lay for implementation of the control measures that were necessary.

You heard from Transport for London that they did not consider that it was their obligation to carry out a proactive risk assessment process of roads under their control to assess the need for protective security to counter terrorism. Nobody challenged Ms Hayward's evidence, at least not that I can recall, to the effect that TfL's attitude to that, TfL's approach to that, reflected practice across the country. It may be that there were variants, but it was certainly the thrust of her evidence that it was commonplace.

The Secretary of State, through the evidence of Ms Nacey, gave a different impression, but in my submission the fact that there was uncertainty about where responsibility lay indicates that the system that they had in place to ensure that the locations were given the proper attention that they deserved must, with respect, have been inadequate.

For the range of reasons that are set out in the written submissions, and I have touched upon today, in our submission, the systems were inadequate.

If you are not persuaded that the systemic failings are sufficient to engage the Article 2 duty, in my submission, the court can also consider that there was a real and immediate risk to life to those on the bridge, such that the operational duty was engaged in relation to protective security on the bridge.

We have already touched on Nice and Berlin, but in my submission the events on Westminster Bridge on 22 March were a gamechanger. The attack was on a bridge. The reasons why a bridge would be an attractive location were the reasons identified by Police Constable Hone: it left those on the bridge with nowhere to go, and so in our submission, this was an obvious threat to Londoners which ought to have been addressed swiftly and promptly.

There can be, we would submit, no doubt that this was an obvious threat. Mr Patterson has, on occasions, taken this court to press reports at the time which demonstrate that there was public concern about it, and justifiable public concern. It can't be an answer, in our submission, to that justifiable public concern about security on a bridge to say: well, there are many other

locations where pedestrians are exposed to the risk of a vehicle-as-weapon attack, because those other locations, wherever they may be, do not have the features of bridges, and it's striking that within 24 hours of the London Bridge attack, the answer to how to address this risk was identified and a solution was implemented almost instantaneously, and the reason it was identified so swiftly is because it was obvious.

It was obvious, we would submit, to Cerastes, it was obvious to PC Hone, Mr Haddon, another member of the City of London Police force who had considered the top five locations of risk and identified London Bridge. It doesn't, we would submit, take a great deal of imagination. The risks that Mr Haddon was identifying were those that were being identified by Mr Hone, and the author of the Cerastes documentation. And it demanded an immediate response.

Now, doubtless it will be suggested: well, nobody suggested that there was an urgent requirement for measures to be implemented. We submit that that lack of urgency arose not because of any objectively good reason. It arose because there was a failure on the part of the authorities to understand collectively the risk, to share the relevant information and to understand collectively what the solution to that was.

So TfL, the City of London Corporation -- well, TfL didn't know. The City of London Corporation knew from 8 May, but didn't consider independently what could be done about it, and the City of London Corporation, the City of London Police force regarded the only solution as being one of hostile vehicle mitigation in the long term, or at least consideration to be given to it, coupled with increased Servator deployments.

With respect to the former, no consideration was given to a temporary response in terms of physical measures. With respect to the latter, personal deployments of individual officers would never be a match for some form of permanent physical security, because it would always be dependent on the times that officers would be present.

We know in the light of the evidence of Ms Hayward that if somebody had raised the suggestion that urgent action was required, action could and should have been taken. I don't seek to criticise PC Hone, as he then was, for his actions, far from it, but Police Constable Hone was operating in an environment where no fast-time solution was deemed viable, was deemed even on the table. So in the circumstances, in my submission, the proper consideration that it ought to have been given was never provided.

So for those reasons we submit there was a real and immediate risk to life, and as a result of the failure to take action, an opportunity to save the lives of Xavier and Christine were lost.

Sir, I have only one final point to make, and it concerns Xavier. We of course heard evidence at the start of this Inquest about the search for Xavier. I don't suggest that Article 2 is in relation to that aspect of the evidence in this case. As you know from my questioning of some of the witnesses that we heard in the early part of this Inquest, those who I represent have some concerns about the adequacy of the search that was performed.

THE CHIEF CORONER: Yes, the so-called "hasty search".

MR ADAMSON: The so-called hasty search.

THE CHIEF CORONER: A rather unfortunate term, I think we all accept.

MR ADAMSON: Yes. And they also have concerns about the speed with which it was called off, but they recognise the evidence of Mr Savage and Mr Lockyer, that suggests that having been propelled into the water, the impact of the water and the moments thereafter meant that it was probably already too late by the time those searches were carried out.

THE CHIEF CORONER: I think that must sadly be the case.

MR ADAMSON: I fear that must be so.

Sir, those are my submissions.

THE CHIEF CORONER: Thank you very much, Mr Adamson.

Mr Sheldon.

Submissions by MR SHELDON QC

MR SHELDON: Sir, the closing submissions on behalf of the Home Secretary are to be divided. Ms Leek will deal with the protective security issues --

THE CHIEF CORONER: Yes.

MR SHELDON: -- and I will deal now, if I may, with the MI5 investigation.

Sir, I see I've been left about 15 minutes before 12.55. I will use those as efficiently as I can, but I fear that I may not complete my submissions by then and may have to address you briefly after lunch.

THE CHIEF CORONER: That's fine, Mr Sheldon, and again, can I thank you very much for the detailed written submissions which have been provided, and also to Ms Leek for both the aspects which I've seen and I've read.

MR SHELDON: Thank you, sir.

Sir, as you will have seen, then, from our written submissions, the focus of MI5's closing submissions as to your determinations is on the question of Article 2 engagement, and in particular whether there is

an arguable case of a breach of the operational duty on the part of MI5.

Now, I acknowledge at the outset that the significance of your resolution of this issue may be limited for three principal reasons: firstly, it will not, of course, affect the scope of your investigation, which has been wide-ranging and thorough, both in general terms and in respect of the MI5 investigation of Butt in particular. It has fully addressed not just the means by which the victims of the attack came by their deaths, but also the wider circumstances surrounding the attack.

Secondly, and to address a submission made by Mr Patterson, it will not affect your analysis of the Secretary of State's PII application, because as you know, the question of disclosure in this Inquest has been approached by MI5 and by your counsel on the basis that any relevant material held by MI5 should be disclosed to the greatest extent possible, consistent with the need to protect national security. That has resulted in an exhaustive exercise which produced, as your counsel have said, and (inaudible) have confirmed, an unprecedented amount of disclosure of an active MI5 investigation into a subject of interest, and that approach would have been no different had it been

determined that this was an Article 2 inquest from the outset.

Thirdly, I would acknowledge that the issue may not affect the structure or, indeed, the content of your conclusions as well, because we would accept that were you to find Article 2 to be engaged on some alternative basis, and I'm not inviting you to do so, the authorities would suggest that you should return a brief Article 2-compliant conclusion addressing all matters you consider to be of central relevance to the deaths and not seek to deal differently with different aspects of the case.

Nonetheless, and despite those observations as to the potentially limited practical significance of this issue, you will appreciate a concern of MI5 to ensure that any conclusion you may reach on the question of whether there is an arguable case of a breach of the Osman duty, be based on the correct application of the legal principles and a rigorous analysis of the relevant evidence, and we hope that our written submissions and the brief observations to follow will assist in that regard.

Sir, we part company with Counsel to the Inquest, as you have seen, on the question of whether the evidence supports an arguable case of breach of the Osman

operational duty, and I'll summarise in a moment the principal reasons for that divergence of view. However, we agree entirely with your counsel in their analysis of whether if an arguable case is found to be established, your conclusions should include any criticism of MI5's conduct of the investigation into Butt.

Counsel to the Inquest are, we would submit, quite correct to submit that they should not. We also agree entirely with Counsel to the Inquest's formulation at paragraphs 61 to 62 of their written submissions of what the terms of an Article 2-compliant conclusion should be in respect of what was known about Butt's extremism and the investigation conducted into his activities should you determine that a conclusion of that nature is required.

Although our submissions are directed primarily at the existence of an arguable case, they apply, of course, with even greater force to the further question of whether, if there is such an arguable case, there are grounds for criticising MI5's investigation, and in the event that you are not persuaded by our submissions as to the existence of an arguable case, we would simply adopt those submissions together with those made by Counsel to the Inquest, in support of the alternative contention that your conclusions should not include any

criticism of the investigation which was, we would submit, a proportionate and well conducted one.

Sir, there is very little I wish to say about the law, which we've addressed in detail in our written submissions. There is, it seems to us, very little between the interested persons and Counsel to the Inquest in respect of the principles applicable to the operational duty, at least, save for some slight differences of emphasis, and the essential framework is largely uncontroversial. I'm sorry that you have had to wade through a degree of repetition of the legal framework in a number of different sets of submissions but you'll understand that the time constraints meant that we had to do quite a lot of this work in parallel.

THE CHIEF CORONER: I quite understand.

MR SHELDON: Thank you. However, sir, although largely uncontroversial, there are four aspects of the application of the legal framework which are, we would submit, of particular importance when it comes to analysing the evidence for this purpose.

The first is the restriction of the Osman duty to knowledge of a real and immediate risk to life. In the present context that translates into knowledge that an imminent attack was being planned, and is to be distinguished from knowledge that an individual might be

dangerous in some general sense, or might be behaving in a manner such as to give rise to legitimate concern. Numerous examples have been given in the submissions of both Counsel to the Inquest and the families of additional investigative steps which might have been taken and, if taken, might have revealed some additional knowledge about Butt and/or the other attackers.

However, that additional knowledge would only bear upon the Osman duty analysis were it to constitute knowledge of attack planning. Additional knowledge to the effect that Butt was a consumer or espouser of extremist propaganda, or that he associated with extremists, or that he was aspiring to travel overseas, would not be relevant to the existence of an arguable case of breach of the operational duty and, accordingly, we submit, care has to be taken when assessing a submission such as the one you heard from Mr Patterson this morning regarding the material on Butt's devices, given that the exhaustive analysis of every single piece of content on those devices has revealed no evidence whatsoever of any active attack planning.

So the second aspect of the framework I wish to highlight briefly is the need to be rigorous in the exclusion of hindsight. Now, the Osman formulation itself makes it clear that the question is what the

authorities knew or ought to have known "at the time", and Strasbourg has repeatedly emphasised the need to exclude hindsight from the analysis.

Now, whilst that injunction is easy and uncontroversial to state, it is, we would respectfully suggest, a challenging one to apply. As Witness L explained, all of the 3,000 or so subjects of interest under active investigation by MI5 lead ordinary lives. They buy household items from supermarkets and DIY stores. They rent vehicles. They associate with wide circles of friends and associates, many of whom may have no links of any sort to any kind of extremism.

After a terrible attack of this sort, it is very difficult to assess objectively evidence of an attacker placing kitchen knives into his shopping basket or hiring a vehicle without attaching a far greater significance to these everyday activities than would have seemed appropriate at the time.

The same applies to associations. Any occasion on which those we now know to be the attackers associated with each other is imbued with a profound significance as an occasion on which it is possible some form of attack planning took place, but we know that Butt and the other attackers associated widely with individuals who were not extremists at the UFC, at the barbecue he

organised shortly before the attack, at a weekly swimming club, and with his friends and family. Particular meetings involving particular associates which are now identified as being of central importance would have seemed like ordinary life at the time.

Third, sir, the Osman test enjoins the court to consider not just whether there were additional investigative steps which could have been taken, but whether there is an arguable case of failure to take reasonable steps. The court has made clear, and we have cited Re Officer L in this regard, that when assessing the reasonableness of the steps taken by the State to protect its citizens from threats to life, both the extent of those threats and the resources available to meet them are important considerations.

The context for any assessment of whether there is an arguable case of a failure to take reasonable steps in this case is the uniquely intense operational environment in which MI5 was operating at the time. Witness L, I would respectfully suggest, was a measured and thoughtful witness. His judgments, including judgments of an operational nature, such as the likely real-time response of investigators to the attackers' activities on 3 June, had they been known, should carry the weight that comes from that level of accumulated

expertise and experience.

In any case, he was certainly not a witness who was given to exaggeration or hyperbole. So when he said that the first half of 2017 was the most alarming time he has ever experienced in his 28-year career in counter terrorism, you can be confident of his assessment of the state of the threat.

Now, as you've heard, difficult decisions regarding prioritisation of finite resources have to be taken on a daily basis. In order to meet the most immediate threats those decisions have to be taken in real time by trying to anticipate what several thousand subjects of interest might be intending to do next.

The complexity and difficulty of that task can hardly be overstated. The regularity with which those decisions prove to be correct, as illustrated by the number of plots detected and prevented during this period, including the 14 you've heard about since Westminster, demonstrates the skill and experience that MI5 is able to bring in its counter terrorism operations.

Now, this consideration is not merely relevant to suspension decisions, about which you have heard some criticism from Mr Patterson this morning, it's also relevant to your assessment of whether there is

an arguable case of failure on the part of MI5 to take some additional investigative step which might have revealed some additional intelligence.

For example, and as correctly pointed out to you by Counsel to the Inquest in the course of the evidence, the reconstruction that has been presented to you of the attackers' movements on 3 June has been hundreds, if not thousands of hours in the making. It has drawn on countless sources of public and private CCTV, much of which could not have been accessed at the time. It has involved the interviewing of numerous witnesses, the examination of seized media devices, the analysis of geolocation data. Any consideration of what MI5 might have discovered had it been maintaining live coverage of Butt on the day of the attack has to grapple with the realities of what that coverage would have needed to entail in order to provide anything like the picture with which the court has now been presented.

It also has to grapple with the question of whether, given the operational environment at the time, and the other threats with which MI5 was faced, including cases where there was intelligence to indicate active attack planning, the absence of that sort of coverage might even arguably be characterised as a failure to take reasonable steps.

With respect, the submissions from the families this morning have failed to grapple with these important considerations, and have proceeded instead by advancing a number of general observations of, we would respectfully observe, limited assistance, to the effect that resources should not be used as an excuse -- which they are clearly not -- or there should have been a request for more funding, an analysis the obvious limitations of which you, sir, have pointed out on more than one occasion in a context where the critical resource is the expertise of highly trained investigators.

I don't wish to labour this point unnecessarily, but there is repeated reference in the submissions you have received to "gaps in coverage", or information such as the buying of knives or wine bottles or meetings such as the one on 29 May without any analysis of the nature and extent of the coverage that would have been required in order to fill those gaps or acquire that knowledge.

Without going into operational detail, it will be readily appreciated that the level of coverage that would be required in order to monitor what Redouane was putting in his shopping basket or to identify that the attackers had a conversation late at night on the street would be extremely intensive. Even if it were possible

to maintain coverage of this intensity, the Osman formulation requires the court to consider whether, in the context of the intelligence picture at the time, which revealed no evidence of attack aspirations since mid-2015, a lack of such coverage might properly be described as a failure and, moreover, a failure to take reasonable steps.

Sir, I note that that probably takes me to 12.55. I'm well over halfway through but I will need a few minutes after lunch, if I may.

THE CHIEF CORONER: That's fine, Mr Sheldon. We will break there and pick up at 2 o'clock. Thank you.

(12.56 pm)

(The Luncheon Adjournment)

(2.05 pm)

MR SHELDON: Sir, as to the last of the four points I wanted to make regarding the framework under which the analysis of whether there is an arguable case should be conducted, we would take no issue at all with the submissions of Counsel to the Inquest to the effect that the threshold for arguability is, in this context, as in many others, a low one, and we would acknowledge that there is a very significant difference between a finding that the evidence discloses an arguable breach of the operational duty such as to engage Article 2, and a

conclusion that criticism of MI5's investigation should be included in your conclusions. Those are two very different things.

However, we do note in our submissions that the gloss placed on the conventional language of arguability or prima facie case in the case of AP, cited both by Counsel to the Inquest and Mr Patterson, namely that it should be defined as anything more than fanciful, is not one that has been adopted either by the higher domestic courts or by Strasbourg.

Now, I note, of course, Counsel to the Inquest's submissions this morning to the effect that there may be very little material difference between the formulations, and he may well be right about that, but we would respectfully observe that the potential disadvantage of the "more than fanciful" formulation is that it may provide encouragement to engage in what is, in truth, speculation, and the need to avoid building an analysis on speculation is the key point we would wish to emphasise in this aspect of the analysis.

We note and unreservedly endorse the conclusion of Counsel to the Inquest at paragraph 25 of their submissions that on the evidence in this case any analysis of whether some additional investigative step may have revealed knowledge of the attack plan

necessarily requires a good deal of speculation. That is, we submit, clearly correct, and it amply justifies Counsel to the Inquest's conclusion that there is no proper place for criticism of MI5's investigation in a narrative conclusion concerned with causatively relevant matters.

However, we would observe that much of the analysis with which you have been presented in relation to the arguable case question also involves a significant degree of speculation. The evidence before the court would strongly suggest that none of the witnesses who have appeared before you, or who were interviewed by the police, including a large number of the attackers' relatives and closest associates, had any knowledge whatsoever that they were planning an attack. Those witnesses include people who lived with or associated closely with the attackers on a daily basis. None of them had any inkling that an attack was being planned and that, accordingly, the attackers posed a real and immediate risk to life.

This attack was conceived and planned in secret. A secret kept by all three of the attackers from those who were closest to them. The exhaustive post-attack investigation has not identified any intelligence that anyone other than the attackers themselves had knowledge

of the attack plan, nor has it identified anything said or done by any of the attackers which, had it been heard or observed at the time, by whatever form of realistic coverage might have been required to do so, would have revealed that they posed a real and immediate risk to life.

It is speculative, and we would submit, inherently unlikely, that additional coverage of the UFC would have revealed that the attackers posed a real and immediate risk to life, there being no evidence that any attack planning took place there.

It is speculative that early identification of Redouane and/or Zaghba would have revealed that they posed a real and immediate threat to life, there being nothing in their respective histories or activities to indicate that they were planning an imminent terrorist attack on the streets of London.

It is speculative that additional information regarding Butt's extremist mindset, whether obtained from his devices or his relatives, such as Usman Darr, would have resulted in a chain of investigation leading to evidence of attack planning. And it is speculative, we would respectively submit, to assert, as Mr Patterson did this morning, without any evidential basis, we would suggest, that the attack planning was there to be

discovered over many months, which we would observe is inaccurate in itself, and that more coverage of some unspecified nature would have detected it. There is no evidence, we submit, that might properly support that assertion.

Now, you have been invited by Counsel to the Inquest and Mr Patterson and Mr Adamson to pay particular attention to a number of specific aspects of the evidence for the purposes of analysing whether there is an arguable case for breach of the operational duty, and we have endeavoured to address each of those aspects in turn at paragraphs 41 to 71 of our written submissions, and I simply adopt, if I may, the detail of that analysis --

THE CHIEF CORONER: Yes.

MR SHELDON: -- in those paragraphs. But in the limited time available, I would like to illustrate some of the overarching points that I have just made by reference to one specific example, what has been referred to as the walk-and-talk on 29 May 2017.

Now, as to the events on 29 May, when Redouane dropped his phone before the three attackers engaged in a walk-and-talk along the street, we know about these events through the post-attack investigation which identified some private CCTV held by a nearby

restaurant. This was an encounter which, it will be recalled, took place deliberately away from the UFC and in the open air. The UFC was not the location of this meeting. It is, we would submit, the only occasion identified by pre and post-attack investigation of the attackers behaving in an overtly suspicious manner.

Now, the coverage of Butt and/or the other attackers that would have been required in order to obtain useful intelligence of this meeting would have needed to be of the most intrusive and resource-intensive nature. It would have required the diversion of specialist resources from other investigations at the most alarming time in recent history in order to place under constant, live surveillance, an SOI in respect of whom there had been no intelligence relating to attack planning for approximately two years.

There is, I would respectfully submit, no arguable basis upon which it might be concluded that the failure to maintain this level of coverage of this SOI at this point represented a failure to take reasonable steps.

It is also very easy in hindsight to attribute this meeting a significance far beyond any realistic assessment at the time. Witness L agreed that dropping the phone would have been regarded as suspicious and meriting further investigation, but whilst we now know

that this was a meeting of the three attackers a few days before they perpetrated a terrorist atrocity, at the time, it would have been viewed quite reasonably as an SOI having a conversation with two unknown associates in somewhat suspicious circumstances, and any assessment of what would constitute reasonable steps in response to that picture has to be conducted in that real-time context.

But even if the reasonable steps hurdle were cleared, it would still be necessary to identify an arguable case that the additional intelligence obtained as a result would have revealed a real and immediate risk to life, and this would require consideration of what might realistically have been done in response to the meeting of 29 May.

As Witness L explained, steps would have been taken to identify Redouane and Zaghba. That may or may not have been achieved before 3 June, but even if they had been identified in the course of a few days, what evidential basis is there, we would ask, for the conclusion that such identification would even arguably have resulted in knowledge that they, and/or Butt, posed a real and immediate risk to life?

Even if once they had been identified their association with Butt had been regarded as suspicious

and meriting some degree of further investigation, there is no evidence, we suggest, to support the conclusion that such investigation would have led to knowledge of attack planning and any such analysis inevitably ends up in speculation.

So even if one takes the arguable high point of the intelligence picture as it now stands, the one occasion in respect of which Witness L stated that the behaviour of the attackers was overtly suspicious, and would have called for further investigation, a rigorous application of the Osman principles falls well short of establishing an arguable case, and we would submit that an analysis of each of the aspects of the chronology raised in the other submissions you have received follows a similar pattern.

In this regard, sir, we rely not only on our analysis of the evidence in our written submissions but also on the evidence of Witness L. He was, we would submit, a manifestly thoughtful and impressive witness. He has reflected very carefully on this case and he had a complete grip on its detail. In his professional judgment, borne of almost 30 years' experience in counter terrorism, he concluded that this was an investigation that was run effectively and well, a conclusion shared, as you know, by the panel of

experts who conducted the post-attack review which described the decision-making taken during this investigation as "sound" in the light of what was known at the time and reflecting a number of aspects of good practice.

That post-attack review was, as you know, sir, described by Lord Anderson as exhaustive, careful and fair. We invite you to conclude that Witness L was right in his considered judgment and that on any fair analysis of the evidence before you, the threshold of an arguable case of breach of the Article 2 operational duty has not been met.

That conclusion is not inconsistent with the list of points identified by your counsel at paragraphs 15 to 17 of their submissions, the points referred to you by Mr Patterson euphemistically and, we would suggest, inaccurately as "the damning list". Those are points you will recognise and, as Counsel to the Inquest made clear, are ones upon which it might be said that there is an arguable case of breach of the operational duty, a case which they go on to submit has not ultimately been made out.

Now, in an investigation of this rigour and thoroughness, it is inevitable that it will be possible to identify at least some examples of additional steps

that might arguably have been taken, and there is room for legitimate debate as to whether those points do or do not make out an arguable case, and that is the debate in which we respectfully engage with Counsel to the Inquest.

But they do not, and are not suggested to by their authors, undermine the ultimate conclusion that this was an effective and well run investigation.

None of that, of course, is to diminish in any respect the determination expressed by both the Director General and Witness L to squeeze every last drop of learning out of these tragic events. Your investigation of this case has revealed how extremely difficult it can be to identify attack planning of this nature. There is, as Witness L and Lord Anderson have both said, no cause for despair: most attacks are stopped most of the time, but in order for MI5 to continue to develop its capability to keep the public safe from acts of terrorism, it must learn the lessons of those cases where it has been unsuccessful. It has been, and continues to be, unstintingly self-critical in this regard, and we are grateful to you, sir, your counsel, and the counsel for the families for the rigour with which the analysis of MI5's involvement in this case has been conducted.

May I finally take this opportunity, in case I don't get another one, to express on behalf of all of us involved in this case on behalf of MI5, our sincerest condolences to the families and loved ones of those killed in this attack, to those injured in it, and to all those who have been otherwise affected by it.

I would also wish to express our profound admiration for the dignity and restraint with which the relatives of those who died have conducted themselves during these proceedings.

Thank you, sir.

THE CHIEF CORONER: Thank you.

Submissions by MS LEEK QC

MS LEEK: Sir, on any account the events that unfolded on 3 June 2017 were tragic on a national and global level and on a very personal level for the families of those involved.

Sir, the Home Secretary and those who work within the Home Office in protective security wish to offer their sincere condolences to the families of those who died in the attacks and to those who were injured. Nothing in the submissions I'm about to make is in any way intended to detract from that.

Sir, I propose to address you on three key points. First of all, the development of the law in relation to

Article 2, in particular, how the general duty has developed. Secondly, the evidence-based facts in relation to protective security in the UK and, thirdly, the application of the facts to the law, in summary, showing that on no basis can it be said that there is an arguable breach of the general duty under Article 2.

May I begin by looking at the way in which the jurisprudence relating to Article 2 has developed. There has been scant, if any, analysis thus far of what the general duty actually encompasses in the submissions that we have heard.

Sir, it may seem obvious, but let us first remind ourselves that the Convention was drafted in the aftermath of World War 2 as part of a Europe-wide initiative to protect human rights and political freedoms in Europe. Let us turn next to the Article itself, subsection 1:

"Everyone's right to life shall be protected by law."

The next part of that is irrelevant.

Subsection 2:

"Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary."

The use of force by State agents does not apply in this first part of these Inquests.

Sir, put to one side the operational duty. We submit that it was never intended by the European Court of Human Rights, or the domestic courts, nor can it be inferred from the jurisprudence, that Article 2, in particular, the general duty, would be used by the courts in an attempt to micromanage the law and the prioritisation of police resources in the way contended for. Because, sir, that is what is being submitted here.

It is accepted that the general duty may arise in a range of contexts, including environmental protection and public health. However, first of all, the nature and scope of the duty must be carefully identified having regard to the specific context of that duty and, secondly, the way in which it is said to have been breached must be identified with precision and by reference to evidence, sir, not simply as set out in paragraph 26 of Counsel to the Inquests' submissions, the systems for protective security in places vulnerable to vehicle-as-weapon attacks were deficient in 2016, 2017, and superior systems may have led to the HVM measures being installed before the attack.

If we look carefully at the scope of the Article 2

duty, we start with the case of McCann. Sir, that was the "Death on the Rock" case in Gibraltar, the first case relating to Article 2 in the context of the use of lethal force by State agents.

Sir, there was no definition or distinction at this stage between the operational and general duty. The refinement of the test required for Article 2 came later in the case of Osman. It was found in McCann that in the context of the use of lethal force by State agents, the State in its planning and control of the operation itself is required to minimise to the greatest extent possible the likely recourse to lethal force.

Sir, that was a case where it was known that there was a real and immediate risk to life from the use of lethal force by State agents.

Sir, moving on three years to Osman. As Ms Barton on behalf of City of London Police said in her submissions, we have to look carefully to see how the general and operational duties have evolved, and, sir, I don't apologise for going through it in some detail.

Sir, in paragraph 115, the court said as follows:

"The court knows that the first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those

within its jurisdiction. It is common ground [the court said] that the state's obligation in this respect extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression, and sanctioning of breaches of such provisions."

Sir, that is the primary obligation under the general duty: an effective criminal law system encompassing independent police, security services, prison, judiciary, parole board, et cetera. The court said:

"It is thus accepted by those appearing before the court that Article 2 of the Convention may also imply, in certain well defined circumstances, a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual."

Sir, at paragraph 116 it said:

"For the Court, and bearing in mind the difficulties involved in policing modern societies, the unpredictability of human conduct and the operational choices which must be made in terms of priorities and

resources, such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising. Another relevant consideration is the need to ensure that the police exercise their powers to control and prevent crime in a manner which fully respects the due process and other guarantees which legitimately place restraints on the scope of their action to investigate crime and bring offenders to justice, including the guarantees contained in Articles 5 and 8 of the Convention."

Sir, the unpredictability of human conduct and the difficulty of making choices in terms of priorities and resources go not just to the operational duty, but also to the general duty.

But, sir, so far as the general duty is concerned with preventing the criminal acts of third parties, it requires a state to have in place effective criminal law provisions, backed up by law enforcement machinery and systems, otherwise the operational duty requirements must be satisfied. And, sir, that is repeated in Mastromatteo v Italy, a 1997 case, as follows,

paragraph 67:

"The state's obligation extends beyond its primary duty to secure the right to life by putting in place effective criminal law provisions to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions. Article 2 may also imply ..."

And then we go onto the certain well defined circumstances which you are clearly aware of. In paragraph 68, the court said this:

"That does not mean, however, that a positive obligation to prevent any possibility of violence can be derived from this provision. Such an obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities bearing in mind the difficulties involved in policing modern societies."

Sir, it follows that the distinction between the general duty to put in place criminal law provisions to deter the commission of offences and the positive obligation to take preventive operational measures in certain well defined -- for good reason -- circumstances must be drawn.

Sir, there is too often a conflation of the general

and the operational duties. By way of example, Counsel to the Inquests referred to Kakoulli v Turkey and Makaratzis v Greece in support of a proposition that the general duty may extend beyond written procedures to encompass the planning and control of operations, including police operations.

Sir, this is, in fact, a completely incorrect reading of the cases. Makaratzis, a 2005 case dealing with the State use of lethal force. The European Court found that the use of weapons by State officials had been regulated and was still being regulated by an obsolete and incomplete law for a modern democratic society. The court did not bring within the general duty the planning and control of the firearms operation but it found that there were no guidelines governing the use of force, ie the individuals against whom they were using lethal force, ie the State was using lethal force, were not adequately protected. So in that case it was found that at a high level the law was inadequate.

Paragraph 57 of Makaratzis says as follows:

"The first sentence of Article 2(1) enjoins the State not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps [and I quote] within its internal legal order to safeguard the lives of those within its jurisdiction.

This involves a primary duty on the State to secure the right to life by putting in place an appropriate legal and administrative framework to deter the commission of offences against the person, backed up by law enforcement machinery for the prevention, suppression and punishment of breaches of such provisions."

And, sir, in paragraph 28 of Makaratzis, the court said:

"In light of the above, the Court considers that as far as their positive obligation under the first sentence of Article 2(1), to put in place an adequate legislative and administrative framework was concerned, the Greek authorities had not done, at the relevant time, all that could be reasonably expected of them to afford to citizens, and in particular to those such as the applicant, against whom potentially lethal force was used, the level of safeguards required to avoid real and immediate risk to life, which they knew was liable to arise."

So, sir, that comes within the operational duty.

It needs to be noted that both of these cases involve the deliberate taking of life by agents of the State and the instruction to them of when they were permitted to use lethal force, ie the State was engaged in dangerous operations.

In Kakoulli, the court reached conclusions in relation only to the operational duty, namely that the use of force was neither proportionate nor absolutely necessary for the purpose of defending any person from unlawful violence or effecting a lawful arrest. There was no discussion of the nature of the general duty beyond the criminal law machinery that has already been discussed.

Sir, the case of Oneryildiz v Turkey has also been cited with regard to the State's duty to protect persons from environmental or industrial disasters. However, we would urge you to note the following: first, in the context of industrial activities which the court has deemed to be by their very nature dangerous, the European Court has placed special emphasis on regulations geared to the special features of the activity in question, particularly with regard to the level of the potential risk to human lives. They must govern the licensing, setting up, operation, security and provision of the activity, and must make it compulsory for all those concerned to take practical measures to ensure the effective protection of citizens whose lives might be endangered by, and I quote, "the inherent risks".

Sir, this relates to specific operations and is akin

to high-level health and safety and licensing legislation, not, for example, the way in which health and safety employees are deployed.

Sir, in Oneryildiz, the court found that since the Turkish authorities knew or ought to have known that there was a real and immediate risk to persons living near the rubbish tip, they had an obligation under Article 2 to take such preventive operational measures as were necessary and sufficient to protect those individuals. As the court said, especially as they themselves had set up the site and authorised its operation, which had given rise to the risk in question.

But, sir, note that the court found that as to the policy to adopt in dealing with the social, economic and urban problems in that part of Istanbul, the court acknowledged that it was not its task to substitute its own views for those of the local authorities and, sir, what we say is that this is effectively what you are being asked to do.

Sir, the courts have consistently held that where the State is required to take positive measures, the choice of means is, in principle, a matter that falls within the contracting State's margin of appreciation.

Sir, in domestic law, in the case of AP, which has been cited with regard to what is meant by "arguable",

more importantly at paragraph 73 Mr Justice Hickinbottom emphasised the purpose of the general duty. Sir, this was a case in which a young man was murdered by another young man when it was alleged the police and social services ought to have known of a real and immediate risk to his life. The operational duty was found not to have been engaged in that case. As to the general duty, Mr Justice Hickinbottom said this, at paragraph 73 for your reference:

"As the authorities make clear, one purpose of the general duty under Article 2 is to ensure that every state provides a functioning police force and effective judicial system that will provide a minimum standard of criminal law protection for the life of those in the jurisdiction of the State. It is not the purpose of the general duty to address the specific needs of particular groups unless the systems operate effectively to bar equal access to the criminal justice system for that group."

Sir, the point is that the European Court and domestic courts have repeatedly identified within the Article 2 duty, a duty to protect life by putting in place a framework of laws at a relatively high level of generality. It is hard to see how the specific definition of which places and spaces within the UK

should be prioritised in terms of a likely terrorist attack falls within that general duty, and to this end, you cannot simply prioritise terrorism: how should police resources be deployed generally?

Sir, I do not ask this glibly, because if we drill down into what you are being asked to do, you are being asked to adjudicate on the prioritisation of police resources.

Insofar as you are being asked to find an arguable breach of the general duty to put in place specific procedures to protect the general public from terrorist attack, you would have to identify what policies and procedures should reasonably have been put in place and what failure in regulation is said to have occurred at that time.

Sir, it was said in Lopes De Sousa Fernandes v Portugal at paragraph 188, with which I know that you are familiar:

"For the Court's examination of a particular case, the question whether there has been a failure by the State in its regulatory duties calls for a concrete assessment of the alleged deficiencies rather than an abstract one."

The court's analysis of the general duty relates to a high-level provision of law enforcement provisions.

What is being asserted here is that in effect the definition of "crowded places" and the prioritisation of locations within it, falls within that high-level provision.

Sir, there is a very real danger of looking at the general duty with the benefit of hindsight, knowing that the attack was on London Bridge.

THE CHIEF CORONER: I'm just going to interrupt you there. Just to explain one bit of the language you used about my familiarity with the Portuguese case, simply that Parkinson was decided -- I think it was the first case which came before the High Court in this country after the Portuguese decision had come out. I know that you were in the case, but really just to explain to others that are listening, that's the reason why I do have a familiarity with it.

MS LEEK: Sir, yes.

Sir, having said that there's a real danger of looking at the general duty with the benefit of hindsight, knowing that the attack was on London Bridge, sadly an attack, and not necessarily this kind of attack, could have been anywhere. If the definition of "crowded place" had included all London bridges and the attack had happened outside a crowded pub, would there then be criticism of the definition for not including

pavements outside pubs, or a lack of focus on events spaces if it had happened at a small event.

Sir, this all concerns a judgment call as to how best to prioritise resources and to coordinate those resources and that judgment call has been made with the benefit of the expertise of the OSCT, of JTAC, of the CPNI, of NaCTSO and of the Department for Transport, and you are being asked to substitute your own judgment for that of those experienced in law enforcement.

Sir, this is not about a catastrophic breakdown in a system. This is not about no system or no regulation, and nor is it a failure at a high level to provide policing at all.

Sir, we set out in our submissions the following: you have to bear in mind first of all that terrorism was one of a very large number of potential criminal threats facing the UK population. Within terrorism, vehicle-as-weapon attacks were not the only form of threat. The UK, and indeed the whole of Europe, were facing a wide and evolving range of terrorist methodologies. And, thirdly, it was not known on a general level whether an attack would take place anywhere in the UK or, if so, how, when or where. There are a number of questions that you would have to ask yourself and answer in order to find an arguable breach

of the general duty.

But, sir, before you did that, you would have to look at what was, in fact, in place, and this takes us to the facts. The facts as to what was in place are clearly set out in our submissions. First, there is a robust framework of criminal law prohibiting the commission of terrorist acts and an extensive and highly sophisticated machinery of intelligence and law enforcement capability dedicated to enforcing that legal framework, including the police, security services, judiciary, prisons, probation, parole board, and so on. There has never been any suggestion in the domestic authorities, or by the Strasbourg court, that the UK's system of criminal law and law enforcement fails to meet the systemic obligation imposed by Article 2.

Sir, Mr Adamson put it on this basis: Article 2 is engaged in relation to bridge security matters. That is looking at the general duty on a micro level. We urge you not to do that.

Look at what was in place. Sir, the Home Office, through the OSCT, has developed the UK and its counter terrorism strategy CONTEST, which comprises a four-strand framework to reduce threats and reduce vulnerabilities: Prevent, Pursue, Protect and Prepare, and bear in mind that this is one small part of the UK's

law enforcement procedure with regard to criminality generally.

Second, the Protect strand is overseen by the Director for Protect, Prepare, Chemical Biological Radiological Nuclear Explosives and CT Science within OSCT which is supported by the Protect sub board. The board tracks activity across the Protect strand of CONTEST, including crowded places through the Crowded Places Working Group.

Sir, you would have to look at each of those strands separately and together to look at whether the general duty to prevent against terrorist murders has been satisfied.

Sir, between July 2012 and 2018 the CPWG oversaw the development of strategy for crowded places.

Sarah Nacey, who has given evidence on behalf of the Home Office, chaired that group from 2016, and, sir, she explained that there came a time where reducing vulnerability to crowded places was looked at, and it was found that only 20% of those places had reduced vulnerability.

So using the expertise that was available, NaCTSO looked at a new framework for prioritisation. Sir, you are being asked to second-guess that framework.

Sir, the OSCT, through the Protect sub board and the

CPWG had a strategic role in the development of protective security in crowded places. Its function was to set the overarching policy and strategy. Save for the assertion that the definition of crowded places was too rigid as London Bridge did not fall within it, there has been nothing in the evidence to suggest that the strategy was inappropriate or in any way inadequate and, sir, it should be noted that the Inquest has not heard evidence from NaCTSO, the organisation tasked with the delivery of that advice.

Sir, NaCTSO and CTSAs, coming down to a micro level here, provide advice and guidance which are free and available to any owner or operator of crowded locations, whether public or private. They provide bespoke advice to places considered to be of heightened vulnerability through the prioritisation process, and, sir, that system is deliberately dynamic so that the police are able to respond to emerging threats and the needs of those with whom they engage. Advice and guidance are produced within a broad spectrum of attack methodologies.

Sir, the very fact that London Bridge was identified by the City of London Police, through an experienced CTSA as a vulnerable site demonstrates the flexibility and efficacy of the overarching system which relies on

local CTSAs to identify vulnerable sites for protective security advice and guidance. So no properly arguable systemic failure has been identified in relation to any of these issues.

Sir, the workstream led by NaCTSO, which was fed into by experienced organisations, including JTAC and the CPNI, developed the new methodology for prioritising the provision of advice to the owners and operators of crowded spaces. This was an eminently sensible way of identifying how best to prioritise resources.

Sir, we have not heard any suggestion or any evidence in relation to what might have been a better way of prioritising resources. Assuming that the prioritisation of resources is sensible, we have not heard any suggestion of how to do that.

Sir, one only has to look at paragraph 28 on page 24 of CTI's submissions to understand how flawed the argument is.

THE CHIEF CORONER: Sorry, just give me that page again? Page 24?

MS LEEK: It's paragraph 28 on page 24 of CTI's submissions.

THE CHIEF CORONER: Yes, I've got it. Thank you.

MS LEEK: Sir, they set out there in simple terms the systems of the State for having physical protective security installed in sites across the UK, but, sir,

even before one gets to that level of specificity, one has to remember that that forms one small part of the general duty to protect against criminal acts.

Sir, they set out the level of OSCT and NaCTSO, the sensitive criteria. They set out that the sites were subject to proactive advice and engagement. They state that other sites could be subject to advice from CTSAs. Effectively, sir, echoing what we have said.

Sir, this criticism appears to be twofold: that there was no specific statutory or regulatory duty governing the owner or authority's duty to assess sites and install protective security and, secondly, that the prioritisation system could, in some undefined way, have been better.

Sir, these criticisms are far removed from what is envisaged by the general duty. The system for the delivery of protective security advice and guidance encompassed not only a guiding definition to enable bespoke police delivery to prioritised places, but the model allowed for the provision of self service, free and accessible advice to all places, whether or not they fell within the definition.

Sir, coming back to the Oneryildiz case, a case where the government itself was involved in dangerous activity, the criticism there was that there was no

advice available and that there was no system and that there was no regulation.

Sir, may I also look at paragraphs 31 to 33 of CTI's submissions. In paragraph 33, it is said as follows:

"Sarah Nacey, the Deputy Director for Protect and Prepare in the OSCT said that, with respect to protective security 'You need to make sure that you are dynamic and able to respond to events'. Furthermore, she very fairly accepted concerns that the definitional tests for a ... Crowded Place are too rigid."

Sir, with respect, that is an inaccurate characterisation of her evidence. She accepted and understood that it was a legitimate concern of the families who had lost loved ones on the bridge that it might not include places that the layman would count as crowded. She did not accept that it was too rigid.

Sir, at page 128 of her evidence, she said:

"Any location that is crowded will, by its very nature, be attractive to terrorists and crowd density was a way in 2014 of trying to differentiate between those areas that would be most attractive."

And, sir, she has indicated also that a new model in response to the emerging threat is now being trialled at two locations.

So, sir, it's our submission that these are matters

which may go to Prevention of Future Death Reports but certainly do not come within the high level of generality required for the general duty to protect against general criminality and terrorism specifically.

Sir, as we've said, this forms one small part of the comprehensive Protect strategy which forms one part of the overarching CONTEST strategy. Second, owners and operators have primary responsibility for protective security on their premises. Third, in the current case, both the City of London Police and the City of London Corporation were aware of their obligations and were taking steps to mitigate the risk.

Sir, the fact that something is not carried out or executed in a particular way does not per se make it a breach of the general duty. Insofar as it is suggested that Sarah Nacey's acceptance that the definition may need refining automatically discloses a breach of the general duty, this is an erroneously simplistic way of approaching the general duty.

The fact that there are experienced organisations constantly evaluating the efficacy of the model for prioritising resources demonstrates clearly that the general duty is, in fact, being discharged.

Sir, may I address just a small number of particular submissions advanced by Counsel to the Inquests.

First of all, it is suggested that if a less rigid approach had been adopted, London Bridge would have been accorded a higher priority in 2016 and early 2017, having regard to the attacks in Nice and Berlin. Sir, this is a flawed analysis. First, what less rigid approach is being postulated? Nice and Berlin were considered in real time by expert law enforcement practitioners to be indicative of the methodology changing to attacks on large events, rather than on streets. You are being asked to second-guess that with the benefit of hindsight.

Secondly, it ignores the fact that PC Hone had local knowledge and did, indeed, identify London Bridge as potentially at risk. This is exactly what CTSAs were supposed to do at a local level.

The evidence was clear: temporary hostile vehicle mitigation would not have been installed because of the threat picture. We were not dealing with an in extremis situation. Permanent HVM was in fact proposed for consideration in any event and would have taken years to install.

Sir, it is suggested further that there was a lack of clear lines of responsibility. Sir, the evidence was given that the lines of responsibility were clearly defined in the CONTEST strategy. Responsibility

cascaded down from the Home Office via the OSCT to NaCTSO and CTSAs who were responsible on a policing level for the provision of advice to owners, operators and local authorities. PC Hone was in regular contact with the City of London Corporation.

Sir, it is suggested that there is a lack of clear procedures for the prompt consideration of temporary and permanent hostile vehicle mitigation on all streets at that time. Again, this is a hindsight issue against which you have to guard. At the time of the attack on London Bridge, there had been one such attack, which had been considered by law enforcement agencies to be a precursor to the attempted attack on Parliament.

Sir, it is easy to say with the benefit of hindsight that there was a high-level failure to consider the installation of temporary or permanent barriers on all busy streets. This fails entirely to take into consideration that resources and expertise are finite and that the threat picture is complex and changing.

Sir, late 2016/early 2017 is picked out because of the Nice and Berlin attacks and because it is said they showed that the attack methodology was changing to vehicle-as-weapon attacks.

Sir, these were seen as attacks on events but were two of numerous worldwide terror attacks with

wide-ranging methodologies carried out in the previous two years: 2014 Malaysia Air bombing; January 2015, Île-de-France attacks; November 2015, Bataclan; March 2016, Brussels bombings and May 2017, Manchester Arena.

Sir, should resources have been moved from events to streets in the light of this? There is no proper evidential basis for concluding that superior systems would have led to HVM on the bridge. What is the superior system that is suggested and how would it, in fact, have made a difference.

Sir, the bridge was, in fact, considered. No superior system could have done more than that. Given the threat picture, there was no basis for deploying the National Barrier Asset and permanent HVM had been suggested for consideration.

Sir, the purpose of the general duty implied under Article 2 by the courts is not, with the benefit of hindsight, to make suggestions as to specific practices and procedures which could have been done better.

It has been said, sir, that there is no specific statutory or regulatory duty governing the owner or authority's duty to assess sites and install protective security. Sir, we have heard that in fact, section 17 of the Crime and Disorder Act addresses the duty to

assess sites in relation to crime, and, sir, it is not just barriers which form part of protective security. One has to look at policing generally on the streets. There was CT policing on high alert in London at the time.

Into that has to be fed Project Servator, forming part of the general duty, and the widespread advice and campaigns promulgated by NaCTSO as the organisation responsible for policing terrorism.

Sir, with regard to causation, and finally, whatever has been suggested with regard to causation, it was made absolutely clear by City of London Police that neither temporary nor permanent barriers would have been installed on London Bridge by 3 June 2017.

Sir, I don't propose to address you in relation to vehicle hire, unless that is something that would specifically assist you.

THE CHIEF CORONER: No, thank you.

MS LEEK: Thank you, sir.

THE CHIEF CORONER: I'm just looking, Mr Horwell, at you, but I'm not sure whether you are next?

MR HORWELL: I sadly believe I am, sir.

THE CHIEF CORONER: Right.

Submissions by MR HORWELL QC

THE CHIEF CORONER: I will look at you Mr Horwell.

I'm sorry about this obstruction --

MR HORWELL: No, not at all. I'm more than used to jurors putting their heads in their hands whenever I stand up, sir, so whatever combination works.

Those who have sat through the evidence of the last eight weeks will have seen both the worst and the best of humanity. The worst from the godless, merciless acts of three murderers, and the best from the extraordinary courage and responses of so many of those who were brought into reach of this barbaric attack.

Those who ran towards danger. Those who confronted and took on the terrorists, police officers and public alike. One young man armed with only a skateboard. The offer of a hand to a woman who had fallen in the rush to escape. Those who stayed and cared for the injured regardless of the danger to themselves. Account after account of heroism, love and decency. Everyone who died was deeply loved and shall forever be missed. Those are the stories that should be told from these horrific events.

Inquests are investigations into the presence or otherwise of fault, and so the suggestions of fault came: the intelligence and police services are incompetent, a firearms officer was in dereliction of his duty for stopping and attending to a dying woman

whose injuries were beyond our imagination, and the London Ambulance Service is accused of cowardice.

In respect of public institutions, there has in fact been much evidence of which the public can be proud, but good news does not make headlines. These are just some of the good news stories: the decision taken in 2016 to increase significantly the armed police capability in London, that must have had an impact on the events that night. Sir, you heard that by the time of this attack, the number of ARVs on duty had been increased by more than double, hence the remarkably quick response times, and the enormous amount of work and preparation that had taken place since the 2008 Mumbai attacks that led to Operation Plato.

We suggest that there can be no doubt that the declaration of Plato and all that so swiftly followed from it, the united forces of the police service, the ambulance service and the London Fire Brigade, that declaration saved lives that night, and the efforts of Superintendent McKibbin and others have not been in vain.

The timeline we provided shows that casualty evacuation was very effective. The injured had not been abandoned for three hours. That myth must end. Those who died had been left for some hours, and that is

a very different story.

That is not to say that there is not room for improvement. No spontaneous operation involving so many hundreds of people from the emergency services can ever be perfect, but we submit that public servants served their masters well that night, and for that we should all be grateful.

Now, sir, our written submissions are long in order that these oral submissions can be short, and our principal submissions on law are as follows: first, that Article 2 is not engaged in respect of SO15's involvement in this investigation, and, secondly, that if engaged, Article 2 has not been breached, and that is for two reasons: first there has been no failure by SO15 to protect the lives of those who died, and, second, and in any event, causation has not been established.

Now, on engagement your counsel have set out their views as follows: that Article 2 is engaged because it is arguable there were breaches by the State of its operational duty to take steps to stop the attack, and uppermost in that contention is the submission that the threshold of whether a breach is arguable is a low one, also described as being "anything more than fanciful".

It is unfortunate that there are so many formulations which seek to define the threshold of

engagement and, sir, only lawyers together could submit possibly 50 to 60 pages on the law in an attempt to define the threshold, and then come the moment of oral argument, agree that there's probably nothing between them.

THE CHIEF CORONER: Yes.

MR HORWELL: That is why English lawyers are revered throughout the world.

THE CHIEF CORONER: The same for judges. It used to be said, Mr Horwell, in the House of Lords that they could find quite a long way of saying something different only to agree that in fact they were saying the same thing.

MR HORWELL: The same thing, yes.

Doing our best to cut through the labyrinthine legal pronouncements, I think it is accepted, I'm sure it is accepted, that there is little difference between those formulations but there is, perhaps, a difference, and we suggest that the threshold applicable to the positive obligation on a State to protect life in counter terrorism policing should be set at arguable breach, and I think the point that we wish to make, so well covered by Mr Sheldon, is that that threshold of arguable breach should not be qualified in an effort to reduce it.

Your counsel have helpfully listed a number of suggested arguable breaches. Our first submission is

that MI5 and SO15 appear to have been treated as one entity, which cannot be correct. They are separate interested persons, they are close, but nonetheless separate organisations. They work in partnership, but require separate consideration.

I'm going to take my time on an analysis of those arguable breaches because it is common ground between your counsel and ourselves that if there has been an arguable breach there is no breach of Article 2, and so I'm going to concentrate my time on the differences that there are between us.

Now, the arguable breaches suggested by your counsel arise from the following events: the failure by MI5 properly to record and follow up the anonymous call to MI5 in mid-2015. And what I would like you to do, sir, is to concentrate on the dates of these events because they are important.

Secondly, the failure by SO15 properly to assign and follow up Usman Darr's Anti-Terrorism Hotline call to SO15 on 30 September of that same year, 2015. M accepted that the failure properly to assign that call was a failing.

Third, the failure properly to assess the material found on Butt's phone viewed by SO15 and MI5. Butt's phone was seized, of course, in October 2016.

Fourth, MI5's inappropriate assessment of Butt, having a weak capability in an era of basic, low methodology attacks.

Fifth, Butt's risk factors. It is suggested that they were not properly taken into account, in particular, his aspirational attack planning, which was known back in 2015, his aspiration to travel to Syria, his links to ALM, his history of violence as low in order as that was, and the fact that he had not been working for many months, meaning that his daily routine was not fully understood.

Sixth, the failure to take sufficient account of Butt's association with the gym.

Seventh, the failure to discover Butt's association with the Ad-Deen primary school.

Eighth, the fact that Redouane and Zaghba were not identified, and, ninth, insufficient attention by MI5 to the 7 March 2017 meeting.

Now, your counsel's essential approach is that but for those arguable breaches, there would have been surveillance on 3 June, and that might have led to the detection and cessation of this conspiracy.

Now, before turning to the law, and indeed, the facts, it is obvious that there is an extraordinary degree of speculation in that analysis, and we suggest

that the analysis is not sound when examined against the chronology of the relevant events.

We respectfully suggest that the conclusion is misplaced because all of those events that I have listed go back some way in the past. The two telephone calls, as I have said in that summary, were made as far back as 2015, and for reasons that we have set out in detail in our written submissions, there is every reason to believe -- certainly in relation to Darr's, and we make no comment on the other -- every reason to believe that nothing further would have come of it.

Butt's phone was seized in October 2016, and the media content was considered by the experts as unsurprising, an assessment with which this court should be slow to dismiss. What is horrifying to us may well be commonplace to counter terrorism operatives.

Above all else, nothing on the phone revealed evidence of attack planning. The weak capability assessment of Butt was in September 2015. It was, of course, increased in May 2017. The plan to travel to Syria was known in late 2015/early 2016. Butt's association with the gym went back many months to the summer of 2016, I think is the earliest date in the evidence. That association with the gym was discovered by MI5 in the late autumn of 2016, and, sir, for the

reasons expressed at paragraph 96 of our written submissions, the gym was almost certainly not considered a safe venue for conspiratorial discussions. Why else have that suspicious conversation outside of the gym when they could so easily have had it inside? And, therefore, we suggest, save for one meeting, the gym is irrelevant to this investigation.

Butt's association with the school went back many months. Butt's association with Redouane and Zaghba was certainly ongoing from at least January 2017, and some, probably much of it, was social. MI5 was aware of the 7 March 2017 meeting in the gym at about the time it took place, and properly took it into account.

All of this could so easily have been known by competent investigators, is one of the suggestions that has been made. Well, we'll follow that suggestion to its end. If, say, by January or February all of that knowledge had been obtained, save, of course, for that of the March meeting, why should it have led to surveillance on Butt immediately before and on the day of the attack? That, we suggest, is not a logical conclusion. No one has identified any trigger, even on that analysis, that would have led to surveillance on 3 June. That, we suggest, is a significant weakness in the argument that there was an arguable breach.

We suggest that in all likelihood, increased surveillance on Butt in January or February would have revealed no more than social contact between Butt, Redouane and Zaghba, and no doubt others, because they did have social contact and were obviously surveillance aware. What they were doing was done in secret. They did not want anyone to know, for obvious reasons, of their attack planning, as limited as we suggest it must have been. They did not even trust the gym as a safe place.

Why on earth, we submit, should events that go back so far, or could have been known for so long, have led to surveillance on Butt immediately before and on the day of the attack. The submission that there was an arguable breach depends on that factual conclusion, and we suggest with respect that that contention is unsustainable.

There can have been no sensible reason why surveillance should have been conducted either immediately before or on the day of the attack. No event has been identified which could or should have caused such surveillance suddenly then to have occurred. That is why we have submitted in writing that for this contention to work, there would have had to have been 24-hour-a-day surveillance on Butt, possibly for months,

surveillance that would, of necessity, have included surveillance on 3 June, and no one has suggested on what was known or should have been known that that could have been justified.

The alternative is that for reasons unspecified, surveillance should suddenly have been ordered on Butt on 3 June, and that is a proposition based in the realms of fiction, we suggest, and not reality.

Mr Patterson argued the following this morning: he said that Mr Hough spoke about continuous monitoring, but nobody is arguing for that. Mr Patterson added what Lord Bingham says is required is reasonable investigation, and that is where he, Mr Patterson, would focus his submissions.

Now, if Mr Patterson is not arguing, and obviously for good and sensible reasons, that continuous monitoring could have been justified, how else could there have been surveillance on 3 June? As we have submitted, no one has identified the trigger for such surveillance.

And so stripping all of this to its bare essentials, what would have been required is a random act of luck for there to have been close, continuous surveillance on 3 June, and luck is nowhere near Article 2 territory.

SO15 was looking for intelligence or evidence of

attack planning. Then and only then would there have been a real and immediate risk to life. No such intelligence or evidence was available to SO15 and none could or should have been obtained in the real world, let alone the world of 2017, a world of unprecedented threat from terrorism with the attendant need to deploy resources in a proportionate way.

L and M are particularly well placed to assess intelligence and to know how to respond to it in a responsible and proportionate way. As both we and MI5 have submitted, this court must be slow in concluding that one or both of them was deficient. Their skills, and those of their respective agencies, did not suddenly vanish during the course of this investigation. That they are experts does not imply that they are infallible, of course it doesn't, but lay people should not in any sense rush to judgment against them, even on this low threshold.

A very good example of the need for caution is the one already given, namely the material on Butt's phone: repugnant and sensational to lay people; unsurprising and commonplace to counter terrorism experts. Mr Patterson complained that this revealed a laissez-faire attitude. We could not disagree more. It reveals the considered approach of experts, experts

who have seen more of this sensational material than we would ever want to. Experts who therefore can objectively and professionally evaluate it.

To summarise, therefore, on the analysis of your counsel, and the critical requirements in that analysis for there being surveillance on 3 June, Article 2 is not engaged in respect of SO15's investigation of Butt. There was no more SO15 could or should have done by then, and we suggest no more that it could or should have done that would have revealed evidence of attack planning, which is the only issue that matters, and certainly no more than it could or should have done which would have led to surveillance on 3 June.

However insignificant the finding of engagement may be, we do suggest that on the evidence, there is insufficient evidence to support an arguable case of an Article 2 breach. It is a matter, for obvious reasons, that we take seriously, especially as this investigation was in the intelligence phase and SO15 did not have full access to that intelligence.

As I have said, if you find against us on this, then we are, of course, in full agreement with your counsel's submissions, namely that there was no breach of Article 2. The evidence simply is not there, and we suggest that such a finding would be irrational.

Throughout this Inquest there has been a surfeit of speculation and hindsight. The time has come for that to end. The skill and dedication of Operation Datival that has so impressed this court is that of SO15 generally. In his statement, M said that he and his officers come to work each day to do their utmost to protect the public from terrorism, and he described how devastated all of them were when this attack succeeded. Their commitment to protect this country's citizens and visitors remains unwavering. We are all so desperately sorry for what happened, but there does not always have to be blame or fault.

THE CHIEF CORONER: Thank you very much.

Mr Horwell, what I'm going to suggest is we take our break there, perhaps just a 10-minute break. But I might ask whether someone might just remove this screen because I don't think I'm going to need it and it will mean that I won't have to ...

MR HOUGH: Sir, just so you know, I may ask you to look at one thing on the screen in reply.

THE CHIEF CORONER: Right, thank you. What we will do is we might just move it closer to the speaker.

We will take a break there.

(3.29 pm)

(A short break)

(3.42 pm)

Submissions by MS BARTON QC

MS BARTON: Sir, in making these submissions on behalf of City of London Police they should not be taken as saying that there is nothing that could have been done better, that there are no lessons that should be learned, and that there are no changes to be made for the better.

Sir, you may be sure, and so may the families in this case, that the City of London Police are not complacent: they are utterly committed to taking away every possible element of learning from this case.

The sympathies and condolence from all at City of London Police go out to the families and friends who lost loved ones in these terrible attacks and all those who were terribly affected by the horrific events.

Sir, it is never all right when people lose their lives and family and friends in tragic cases such as these, but those irrefutable facts cannot justify the imposition of an Article 2 duty if, in law, that duty does not exist, and this is particularly important, sir, where the consequences of the imposition of that duty rebound far beyond the walls of this court.

Sir, in addressing the issue of whether Article 2 is arguably engaged, and/or breached in this case, the Commissioner wishes it to be made clear that these

are principled legal submissions, and the Commissioner positively invites you, sir, to make detailed findings of fact in your summing-up or ruling, whatever your ruling on Article 2.

So I turn firstly, sir, and very briefly, to the issue of the general duty under Article 2. As has been made clear, I hope, in our written submissions, the City of London Police recognises that there are a number of relevant authorities which suggest that the Article 2 general duty is not engaged against any IP on the facts of this case, and there is a duty on the part of the Commissioner to draw the relevant authorities to your attention.

And, sir, they are authorities which require careful analysis because, as Mr Hough very fairly acknowledged this morning, he said, in making his submissions, the absence of a comparable case on the authorities "should not prevent a duty being developed in the way we suggest". Thus Mr Hough has importantly acknowledged that to take the course suggested would involve a development of both the domestic and European case law.

Ms Leek has dealt with the issue of the general duty very clearly and succinctly, and of course you will no doubt be aware that the criminal law is only one aspect

of the totality of the legal framework which sits within this jurisdiction. We also, of course, have civil law remedies, judicial review and misconduct and discipline as part of our legal processes, all of which can and perhaps are better suited, the latter, to the micromanagement of particular policies and procedures.

You may conclude that the detailed submissions made by Ms Leek on behalf of the Secretary of State illustrate the significant extent to which the current legal framework has in fact got to be developed in order to encompass the facts of these cases, and I say simply this, sir: that the submissions that have been made on behalf of the Secretary of State serve to underline the concerns flagged up by the City of London Police in their written submissions.

I then say no more about the engagement of the general duty, but turn to whether, if that general duty is engaged, it can properly be said that there was an arguable breach by the City of London Police.

The systems in place for protective security were imposed centrally upon all police forces, the City of London Police included. If that's right, then it's worthy of note that in accepting, as they must, the systems and procedures under which they worked, they, perhaps uniquely, went on to take individual steps to

try to improve the situation with which they were faced, and there are specifics that I can point to that show at local level what additional systems supplemented the national guidance.

First of all, you have heard that the City of London Police repeatedly were involved in trials of counter terrorism tactics to improve their position. They created a specific role of counter terrorism coordinator, which was held by Sergeant Hone. Sergeant Hone supplemented the Crowded Places Model by creating a unique matrix, which caused him to identify London Bridge as a potentially vulnerable location outside the Crowded Places Model.

They commissioned the Cerastes report on protective security within the City, and having done that, they followed to the letter the recommendations in that report, by increasing the Servator patrols by 35% in the relevant period, and by considering the installation of HVM as recommended.

It is accepted by all in this case that the CTSA role is an advisory one, and in their advisory role, we heard that the Corporation of London was advised of the potential vulnerability following the Cerastes report and was provided both with the report and the summary.

Given the procedures which were in place, it was not

within the power of the City of London Police to put temporary HVM on the bridge, because the only way of utilising the National Barrier Asset at that time was on the basis of intelligence or events.

And so just standing back for a moment from the alleged engagement and breach of the Article 2 general duty, in my submission, on behalf of the City of London Police, it is very difficult to see what more they could have done within the systems that were in place at that time, and, indeed, you will no doubt recall that Ms Nacey on behalf of the Home Office said that it was a gold standard service which Police Sergeant Hone had offered, exactly as they had envisaged that the systems would deliver.

Therefore, on the facts of this case, it's our submission on behalf of the City of London Police that the Article 2 general duty has neither been engaged nor breached.

The operational Osman duty, sir, I'm going to deal with very swiftly. It is submitted on behalf of the City of London Police that the facts of this case fall so far short of the Osman test that it is not even arguable that Article 2 is engaged on the basis of the facts. The engagement of Article 2, the operational duty, is effectively said to hang on the fact that

London Bridge was recognised as a potentially vulnerable location, but we know from the case of Mastromatteo, in specifically paragraph 74, that the mere existence or a mere condition sine qua non does not suffice to engage the responsibility of the State under the Convention, and we would say that that is exactly how the operational duty is being sought to be engaged on the facts of this case.

We are in a position to address the issue of operational duty much more fully, however, we respectfully agree with your counsel on this issue that it does not apply on the facts of this case.

I turn then, sir, because of all of the submissions that have gone before, to the issue of the proposed narrative which is set out in paragraph 63 of your counsel's submissions, and what I say in general terms about any narrative, if you were to decide that Article 2 general duty was engaged, is that the terms of the narrative must reflect the breach that is in fact alleged, and what we have here in the course of that narrative at paragraph 63 is an assertion that there was a failure to implement appropriate hostile vehicle mitigation measures on the bridge.

There is no basis for saying that there's a failure if there is no positive duty which arises to require the

HVM being placed on the bridge at that time. If there is no operational duty in this case, then the submission that we make is that if you decide the general duty is engaged, it is important to restrict the form of words to reflect the breach, which does not include a failure to implement.

So I have, at paragraph 5.5 of my submissions, set out the amended form of words which we suggest would meet the facts of the breach if found.

Sir, those are my submissions.

THE CHIEF CORONER: Thank you very much indeed.

Ms Simcock.

Submissions by MS SIMCOCK

MS SIMCOCK: Sir, thank you.

Sir, may I take this opportunity, in common with others, to offer my sincere sympathies and condolences to the families and friends of the deceased on behalf of all those at the London Ambulance Service.

Sir, you have our written submissions and I don't propose to repeat everything in them. I wish to deal only very briefly with proposed narrative conclusions.

We deal with these at paragraphs 27 to 35 of our written submissions. The LAS agrees with the formulation suggested by Counsel to the Inquests, subject to only one small amendment regarding the

description of ambulance personnel who attended Christine Archibald. In relation to the suggested amendments by the families, regarding Sébastien Bélanger and James McMullan, these are dealt with at paragraph 29 onwards of our submissions. The LAS again agrees with Counsel to the Inquests.

We agree that anything better identifying those giving medical assistance to the deceased and that they did so at great personal risk is helpful and appropriate and we have no objection whatsoever to that part of the suggested amendment.

In relation to recording their lack of knowledge of ambulances nearby, we respectfully, again, agree with Counsel to the Inquests that this should not be included. This morning, Counsel to the Inquests advanced two reasons for that: the first, that it is not accurate; we agree, and we address this at paragraph 31 of our written submissions. It is, sir, clearly important that the narrative is accurate and not misleading.

Second, that there is effectively a danger with its inclusion of implying potential causation in relation to the deaths when we know that the evidence is that there is none. Again, we agree.

We would respectfully add a third reason, which is

set out at paragraphs 32 to 34 of our written submissions, and that is this: that selecting one non-causative circumstance that is therefore not a central fact in relation to these deaths risks giving it undue weight and significance, and wholly excludes and ignores the many other equally or even more relevant surrounding circumstances, and it is for all of those reasons that it should not be included, in our respectful submission.

In relation to Alexandre Pigeard, we have no objection to the family's suggested amendment, save that we say that the phrase "many hours later" in relation to the confirmation of death by a paramedic is also potentially misleading as it could mean very different things to different people, but tends to suggest a large number of hours had passed. We know, sir, from the evidence, that that is not the case, and it was, in fact, some, just short of three hours that had passed since the attack on Alexandre Pigeard.

Given we now know the time of attendance of that paramedic, we suggested in supplementary written submissions that the exact time should be recorded instead. We can, though, well understand that there may be reluctance to include exact timings in this regard, particularly where it is suggested only in relation to

some deceased and not others. We have noted the absence of specific timings in this regard in Counsel to the Inquest's original formulations in relation to all of the deceased. We made this suggestion only in response today to the suggested amendment from the family, including that particular form of wording to which we object.

We would only further observe that it is likely that a formulation of words can be found which accurately records that this confirmation of death was not immediately related in time to the assistance given by the police officer, whilst also not giving a potentially misleading impression of the passage of a large number of hours when we know from the evidence that there was not. We would suggest "at a later time", but of course, there may be other forms of words which are acceptable.

We also suggest changing the word "assessed as dead by a paramedic" to "confirmed" as this more accurately reflects the process carried out. The formal procedure being carried out was that of a recognition of life extinct or ROLE, about which sir, you have heard evidence.

In relation to Kirsty Boden, we have no strong objection to the suggested amendment at paragraph 8 of the family's supplementary submissions. We merely note,

though, that Dr Jordan, who pronounced Kirsty Boden deceased, attended to her as an off-duty doctor and she was therefore effectively a member of the public attending to assist as she could, and not as a medical professional employed and specifically tasked in the operational response to the incident. This, therefore, we would say, was not a formal pronouncement, it was not carried out under any formal procedure, and Dr Jordan, of course, did not tag Ms Boden in terms of triage or recognition of life extinct.

We would therefore suggest not including the word "formal" or "formally" in relation to Dr Jordan's pronouncement of life extinct, but we have no objection to its otherwise being recorded.

For that reason, and for consistency of approach, we also suggested in supplementary written submissions that, as with Alexandre Pigeard, the time at which a paramedic formally confirmed her as dead should also be recorded. Again, though, if there is a desire to avoid the use of specific exact timings in relation to a particular deceased, this could be addressed in a similar way as with the formulation in relation to Alexandre Pigeard.

Sir, if it's helpful, we would, of course, be willing to further liaise with Counsel to the Inquests

and counsel to the families regarding the exact proposed wording for your narrative conclusions which is, of course, though, we recognise, ultimately solely a matter for you.

Sir, unless there's anything else with which I can be of assistance, those are my submissions.

THE CHIEF CORONER: Thank you very much.

MR RADCLIFFE: Sir, you've got our written submissions. We didn't intend to make any oral submissions unless matters arose during the course of those that preceded us. Matters haven't, and so I don't propose to address you.

THE CHIEF CORONER: Thank you very much, Mr Radcliffe.

Submissions in reply by MR HOUGH QC

MR HOUGH: Sir, it is, perhaps, we hope, a hallmark of independence that everyone finds something in our submissions to disagree with.

Let me, however, begin by agreeing with submissions which Mr Horwell QC made at the outset of his representations. These Inquests have included a great many more facts and stories than those which the legal issues debated today require us to focus upon, but that broader set of facts and stories must be kept well in mind, and, as he has submitted, we heard throughout the first month of this hearing, a range of harrowing and

humbling accounts of horrific attacks and extraordinary bravery, both by members of the public, members of the emergency services, and not least by those who died themselves.

The telling of those stories and their publication to the wider world is a very important part of these Inquests. Those accounts will no doubt form part of a very detailed summing-up, which I know that you, sir, will be delivering tomorrow and on Friday. Also featuring in that summing-up will be positive features of the coordination of emergency services response, which was addressed in such detail, for example, by Superintendent McKibbin, and nothing in the submissions I made this morning or those which I shall make now in reply should be taken to cast any doubt on any of those sentiments, and I should also stress that throughout our submissions we have not been looking casually to cast blame, but have attempted to grapple with the legal issues which you are required by the facts of this case to address.

May I then address in turn a number of the submissions of my learned friends, and in doing so, I shall not go over ground which I dealt with in opening in which I addressed preemptively a number of the points which have been made.

First of all, in response to one of Mr Patterson's submissions, I should make a few points. He submitted that one aspect of his argument is that there was an appreciable real and immediate risk to the lives of the general public before 3 June 2017, and in this respect he said that our focus upon that particular day was too narrow a focus.

In our submission, the difficulty of that submission is one which has been identified by Mr Sheldon QC and Mr Horwell. One needs, under the Osman principles, to identify a time at which a real and immediate risk to the public should have been appreciated and reasonable preventive action taken which might realistically have averted the risk.

In our submission it is difficult on Mr Patterson's argument to identify with any clarity what that time was. It cannot have been every minute over the two years of the investigation from mid-2015 to 3 June 2017, not least because there were periods when risks were reasonably assessed as reducing, on any view.

Our case, as you know, sir, supporting an arguable basis for engagement -- for breach of the operational duty in respect of the pre-attack investigation, is that a real and immediate risk arguably could have been appreciated on 3 June 2017 in seeing the van hire and

its surrounding circumstances in the context of who the attackers were.

Sir, we acknowledge that that would have required some live monitoring on the day, not necessarily human live monitoring, but if one does not zero-in upon that point as representing an appreciable real and immediate risk, it is, in our submission, difficult to identify the period of time. I'll return to this when I address the submissions of some others.

Turning to Mr Adamson's submissions, he addressed the operational duty in the context of protective security, and he said that that operational duty was arguably and actually breached.

Now, once again, the problem that faces this argument is identifying a time when there was a real and immediate risk appreciable such as to require urgent action of the kind he proposes. In particular, it is important, as we've already submitted, that bridges were not regarded as a potential risk or threat target. It is also important to appreciate the significance of Mr Hone's evidence. He did not regard the risk, even after Westminster Bridge, as requiring urgent action in the form of installing hostile vehicle mitigation measures at great speed.

Now, I appreciate the argument is made that he

didn't know of the possibility of procuring temporary measures privately, but there was nothing in his analysis which suggested that he regarded as especially urgent the need to install hostile vehicle mitigation given that he had also been proposing other mitigation measures in which he evidently had a great deal of confidence, namely the Servator deployments.

Mr Adamson importantly also submitted that the Westminster Bridge attack was, in his words, a gamechanger, and so it was: it triggered a series of actions about which you have heard. But it is difficult to imagine, on the systems which applied at the time, that any of the state bodies could realistically have taken action within their understood powers based on what they knew to install hostile vehicle mitigation within the time between the two attacks.

Sir, let me turn now to Mr Sheldon's submissions, and I've addressed a number of these points preemptively. I would just make a short response in relation to what he said about Witness L. We agree, respectfully, that Witness L was a thoughtful and impressive witness. However, of course, his judgment should not be endorsed without scrutiny, and it must be acknowledged that he was speaking for others. In this regard, he may have been bringing very considerable

wisdom and experience to bear, but he was not the person in the operational chair throughout the investigation.

I would also make one comment in relation to Mr Sheldon's description of Lord Anderson's conclusion. Lord Anderson endorsed the process of the post-attack review as thorough, but he was careful to say that it was not within his expertise, and therefore not appropriate for him, to say that the conclusion was right.

THE CHIEF CORONER: He chose his words, I think, quite carefully.

MR HOUGH: He chose his words very carefully.

Let me turn, then, to Ms Leek's submissions, and if I may, I'll address these at slightly greater length.

She addressed the Article 2 jurisprudence first, and in our submission, the Article 2 general duty has been expressed, and deliberately expressed, by the European Court of Human Rights and by our courts in broad terms. We have set it out in one of its most authoritative formulations at paragraph 8(b) of our submissions:

"[A duty to] establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life."

And we accept it is a high-level duty and we accept

that it is to be applied fact-sensitively to each particular set of circumstances. But it is not, we submit, a duty which has been kept within narrow silos and it is not, we submit, a duty which simply cannot apply to a new set of circumstances, and it is only to the extent of applying it to a new set of circumstances that I used the word "development" in my submissions this morning.

We accept, of course, that the general duty does not require a disproportionate burden to be imposed upon the State. However, it does require a set of adequate systems to protect life in each different context, and Ms Leek's own submissions illustrate how it has been developed to each new context in which it has been applied.

She first of all addressed the case of McCann which, as she recognised, preceded recognition of the general duty and was a case concerned with the operational decisions involved in the "Death on the Rock" operation.

She focused in more detail on the Osman case, and in that case, the general duty was described as requiring a system of law enforcement and that was an entirely natural and predictable way for the duty to be described in the context of prevention of crime. Osman was, of course, a case about the duty of the authorities to

protect an individual against the criminal act of another.

Nothing in the Osman case indicated that the future application of the duty would be restricted so as not to be capable of encompassing employing physical security measures against physical threats from the criminal actions of a third party.

Mastromatteo similarly set no high watermark and was comparably a case about protection from criminal acts. Interestingly, though, Mastromatteo involved a development and extension of Article 2 duties, there the operation duty, so that it applied beyond identified individuals and to society at large, an illustration of the ability of the courts to develop the duties in line with their central purposes.

The Kakoulli case concerning police operations identified at paragraph 108 the need to consider, and I quote:

"... the relevant legal and regulatory framework and the planning and control of the operation".

In our submission, sir, that had to be a gloss on the general duty, requiring the general duty, or recognising that the general duty applies to the control of police operations and the planning of those operations.

At paragraph 110, the European Court referred to the fact that Article 2 duties required training to be in place for police officers who might employ lethal force. Again, we submit that that had to be a facet of the general duty rather than the operational duty.

Oneryildiz and Budayeva were environmental risk cases, and Ms Leek sought to persuade you that by their nature they were limited in their application to inherently dangerous sites, or perhaps to an extent in the Oneryildiz case an inherently dangerous site within the purview of the State.

But in our submission, the broad principle identified in Oneryildiz at paragraphs 89 to 90 is not so limited and suggests a broader scope to the Article 2 duty. It resonates directly with the paragraph from Middleton which we quoted at paragraph 8(b) of our submissions.

Ms Leek is quite right to say that the court in that case stressed that it should not substitute its own views for those of the State, but that, as she rightly said, was a point about the margin of appreciation, not whether a general duty to have proper assistance could apply outside narrow silos of criminal justice or environmental protection.

The AP case which Ms Leek referred to was another

prevention of crime case, essentially reiterating the points made by Osman in that context, and of course that was a case where the operational duty or a breach of the operational duty was sought to be dressed up as a breach of the general duty.

In our submission, none of the European cases suggests that the general duty, as formulated most clearly by the Grand Chamber in Oneryildiz, is limited to criminal law and to a narrow Rylands v Fletcher type enclave of environmental protection.

We should also make clear that it is a different submission to say that the duty only applies so as to require a framework of criminal law from one which says that the duty should be applied at a relatively high level of generality. We accept that the duty should be applied at a relatively high level of generality. What we do not and cannot accept is that it could not, in principle, apply to require some adequacy of systems in ensuring adequate protective security.

The next point that was made after the analysis of the law was that we are seeking to micromanage the duties of the Secretary of State or, indeed, of others, or that we have -- and this is a slightly -- a submission perhaps slightly intentioned -- that we have not been sufficiently clear in identifying

precisely what different systems ought to be applied.

So in paragraph 44 of our document we've sought to explain in contrary terms what we regard as the inadequacies of systems on an arguable or actual basis. As you will see from that paragraph, there is no attempt to micromanage the way in which systems are organised or priorities are allocated. A concern we identify, for example in the first of our criticisms, is that the system which was in place imposed a straitjacket, excluding arbitrarily sites with certain characteristics from the consideration that would naturally be given to priority 1 and priority 2 sites, rather than leaving it to more nuanced or expert judgment.

This is not, sir, as has been suggested, a point developed through hindsight. Our criticism was shared by Commander Gyford at the time. She described the system as over-rigid with an apparent degree of frustration in the meetings which preceded the attack. It is not a criticism directed at judgment calls because, as you will have seen, our submissions all go to systems.

Sir, we would respectfully take issue with the suggestion that the systems reflect expert judgments, given that Ms Nacey accepted at least some of the deficiencies which we have identified. She, of course,

was the witness who gave evidence on behalf of the OSCT. And lest it be suggested that we have unfairly characterised Ms Nacey's evidence, may I bring up on screen three sections of transcript, please. First of all, {Day31/127:5-17}, if I can ask you to read lines 5 to 17 to yourself. And then page 130 lines 12 to 20, {Day31/130:12-20}, if I can ask you to read those to yourself, sir.

THE CHIEF CORONER: Yes.

MR HOUGH: Then page 169, lines 3 to 12. {Day31/169:3-12}.

THE CHIEF CORONER: Yes.

MR HOUGH: So I won't provide any gloss: those are the relevant passages, you can decide for yourself whether those involve Ms Nacey accepting flaws in the definitional tests.

Sir, the next point that was made was that the identification of London Bridge for close attention by PC Hone validates the procedures which are in place. In our submission, it doesn't. That action was triggered by an emergency order from the Deputy Assistant Commissioner in March 2017 after the Westminster Bridge attack which caused PC Hone to be tasked to find the most vulnerable sites in his area. That caused him to look beyond what had been priority 1 and priority 2 crowded places.

Finally, sir, we were asked to identify a superior system. Well, we have been careful not to do so at the risk of being accused of micromanaging procedures. However, all we would say is that a superior system could perhaps be found which did not impose, as I say, an excessive straitjacket and was capable of being defended by the principal Home Office witness giving evidence on the subject.

May I then turn to the submissions of Mr Horwell. Mr Horwell stresses the lack of a trigger for surveillance on 3 June 2017. I will be brief in responding to this. We have sought to explain that there is an arguable basis for a high level of surveillance being required at that time based on an accumulation of matters. First of all, background facts which would arguably have caused the Security Service to attach a higher risk profile to Khuram Butt. Secondly, arguably missed investigative opportunities in early 2017 which might have added significantly to understanding of him and of Redouane and Zaghba. And thirdly, and importantly, as I submitted earlier, the need that existed after the suspension that ended in early May to build coverage given the substantial period of suspension and given the apparent blind spots and limits of understanding about Khuram Butt's routine.

What we have submitted is that it is arguable that proper account of those matters might have resulted in surveillance of a level to identify the hiring of the van on 3 June 2017.

Now, at the level of whether that set of propositions is arguable, we say that it is. At the level of whether it succeeds, we say that it does not succeed and we've sought, as I say, to explain the potential argument to the extent that it can be advanced, but also its ultimate weakness, and we have also sought, I hope fairly, to identify the strengths in the investigative work of MI5 and SO15, and the successes of those bodies.

I should also say that we acknowledge Mr Horwell's point that SO15 was not as involved in all of these matters, given that the investigation was at an intelligence phase, than was MI5.

Very briefly addressing the submissions of Ms Barton QC. She has addressed the possibility of a finding of arguable breach of the general duty by City of London Police. I don't think that is an allegation that anyone has put forward. For reasons we have given we would reject any suggestion that there was a breach of the operational duty by City of London Police.

We can see the force of what she says about the form

of words in paragraph 63 of our document, but no doubt you will take account of all the submissions when formulating any form of words on the subject of protective security.

And finally in response to submissions, as regards Ms Simcock's submissions, we hope that it should be possible, with her helpful offer, and the assistance of Mr Patterson and Ms Ailes to agree means of death narratives for all those who died.

Sir, before I conclude, may I make one final point, and it's probably appropriate to do so at this stage rather than at the end of the hearing. We all recognise that the provision of Legal Aid for inquests is a matter of policy and that difficult judgments sometimes have to be made by those implementing the policy, and we would simply say this about the representation which the families have had in these inquests: that in our respectful submission, the part played by Mr Patterson, Ms Ailes, Mr Adamson, his juniors and their instructing solicitors has been of great assistance in exploring the issues and allowing the Inquests to be as rigorous as they have been, and as all counsel have recognised they have been.

I won't go further than that, because it isn't appropriate for us to say more than to recognise their

value to the process.

THE CHIEF CORONER: Yes. And those are sentiments which I entirely endorse, Mr Hough.

MR HOUGH: Unless I can be of any further assistance, those are my submissions.

THE CHIEF CORONER: No, thank you very much.

Again, I repeat, I'm extremely grateful for all of the labours of everyone producing very detailed written submissions and followed by brief oral submissions today.

I've got quite a bit to think about, which I will do, and we will sit again tomorrow morning at 9 o'clock. My apologies in advance. It's going to be a long day tomorrow and probably a long day on Friday.

(4.31 pm)

(The court adjourned until 9.00 am on Thursday, 27 June 2019)

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